

Comments of the National Military Fish and Wildlife Association on A-76 and the Outsourcing of  
Natural Resources Management in the Department of Defense, 15 June 2001

These comments can be condensed into 8 main points.

1. Natural and cultural resources management is not a commercial activity.
2. The contracting of natural and cultural resources management will lead to and has lead to unacceptable resource degradation and will ultimately impair the ability of the ability of the military to use land, sea, and air for training.
3. The current belief, particularly in the Army, that the only natural resource management positions that are inherently governmental are located at Major Command and higher levels, is a recipe for disaster.
4. The inherently governmental nature of natural resource management is recognized and written into the Sikes Act (16 U.S.C. 670 et seq.) and into the following regulations: 32 CFR Part 190, 32 CFR Part 169, DoDINST 4715.3, DODD 4100.15, and OMB Circular A-76, OFPP Policy Letter 92-1.
5. The FAIR Act (31 USC Part 501) is general in nature and as such does not repeal the Sikes Act.
6. The A-76 process is being ignored in order to achieve arbitrary conversion goals for the federal workforce. Inherently governmental functions, such as natural resources management, are being "bundled" with commercial activities in one large contract.
7. The entire A-76 and FAIR Act process is shrouded in secrecy, bogged in bureaucracy, and cloaked in uncertainty about actual money saved.
8. If DOD is allowed to contract natural resources management functions, then all National Parks and Forests and Wildlife Refuges could be farmed out to contractors with a profit motive rather than a public servant attitude.

Because the Army and Air Force have largely ignored or refused to recognize these points and are continuing a policy of eliminating civil service natural resources positions at the installations and the because courts may take years to resolve the issue, the National Military Fish and Wildlife Association asks for the following actions:

Congress should immediately amend the FAIR Act to recognize the Sikes Act exemption and other exemptions as may already exist.

Congress should consider an amendment to FAIR Act that recognizes land and natural resources as long-term investments for our nation's future, that all land and resource management positions are inherently governmental and shall not be subject to commercial activities review, outsourcing, privatization, or any successor program which would convert these functions to the private sector.

Congress should consider an amendment to FAIR Act that recognizes natural and cultural resource management at the installation/park/refuge/forest level is inherently governmental and therefore exempt from conversion.

## **1. Natural and cultural resources management is not a commercial activity.**

**Management of natural and cultural resources on behalf of all the people of the United States is a long-term trust responsibility. A stable, in-house federal workforce is the only way to assure protection of both the military mission and the environmental resources upon which it depends.**

Contractors are in business to make a profit. They have to continually worry about winning the next contract. They have to continually worry about spending money and achieving short-term results, often just **one fiscal year at a time**. Wildlife must be managed for ten years or more at a time. Timber must often be managed for 100 or more years at a time. Cultural resources must be managed for 1000 or more years at a time. The decisions our DOD natural and cultural resources managers make, on behalf of the American people, can only be made after a very deliberate public process. These are long-term decisions affecting public resources and are inherently governmental in all cases.

Natural and cultural resource management is not a commercial activity. You cannot pick up a set of Yellow Pages and find a listing for wildlife management, or Native American consultation, or habitat management, or national historic landmark management, or threatened and endangered species management. You may find consultants and researchers for these subjects, but no managers. Natural resource management on a daily basis on our Federal lands has from its inception been the purview of a small cadre of dedicated, accountable, public servants not private contractors.

It is true that the natural resources management at most installations is so inadequately staffed, that nearly all specific natural resources projects are already executed by contract with other agencies and by private-sector contractors. Why then the rush to eliminate the only individuals left who are qualified to determine contract priorities, write and administer contracts, and provide continuity of programs?

## **2. The contracting of natural and cultural resources management will lead to and has lead to unacceptable resource degradation and will ultimately impair the ability of the ability of the military to use land, sea, and air for training.**

It is completely understandable that a military commander would not understand the complexity and stringency of natural resource laws. His job is to win wars, and by doing so, keep the peace. It is also understandable that a commander might have little regard for natural resource laws. He is trying to protect his country and is being thwarted by an environmentalist.

Still, the vast majority of military commanders are ardent in their support of a country ruled by law, and would never knowingly violate one. However, a recent survey by Public Employees for Environmental Responsibility (PEER) indicated that 36% of commanders held natural resource issues in very low priority and 23% of natural resource professionals reported they had been ordered to violate laws or overlook violations of laws. A full 44% of these professionals felt violation of natural resource laws by military commanders had no negative consequences.

The problem is with minority of officers who regard their calling to be of a higher level, even higher than the law of the land. Some might even want to fire the natural resources professional who confronts them, but cannot. The Merit System Protection Board protects Federal employees, at least in theory.

What this minority of short-sighted officers fail to understand is that the installation natural resources professional:

- Is the messenger, and not the message. He does not make the law; he merely knows the law and relates it professionally.
- Actually facilitates training and the military mission, enhancing training opportunities as much as possible while staying within the law.
- Fosters trust and working relationships between the base and state and federal regulators, ensuring far more training opportunities than regulators would directly.
- Through proper stewardship of the land with far-sighted goals, keeps the land suitable for training for perpetuity.
- Is constantly engaged in research to protect the installation and its mission.
- One of the best friends he has.

Not all contractors are bad. In fact, only 38% of those in the PEER survey had poor or extremely poor experiences with a contractor. About 40% had seen contractors place “customer satisfaction” ahead of what was best for the resource. Twelve percent believed that present installation desire to contract was to mask natural resource problems.

What is wrong with customer satisfaction? Nothing, if the customer is not placed above the law and a long-term view is maintained. However there are deficiencies that occur in contractors that compromise the law and the long-term view.

- There is no corporate memory. There is no long-term permanent employee retaining that installation memory, nor even a contractor with any real hope of long-term presence on the installation.
- There is no long-term commitment. Contracts end in a year or a few years.
- No long-term commitment results in little continuity in long-term planning, an absolute requirement if training is to continue for the foreseeable future.
- The contractor is vulnerable each option year and can in turn fire his conscientious employees instantly, as the messenger bringing the wrong message. The end result is often bad advice just to please the commander, resulting in installation liability and penalties by regulatory agencies.
- Quality of effort and result often suffers. The contractor is watching the bottom line, profit, and providing the minimum necessary to fulfill the contract.
- Competition for secure jobs attracts quality government employees; usually only inexperienced employees will put up with the frequent transitions among contractors.
- There is little accountability. If an installation is found violating a law, the installation pays the fine and has training disrupted. The contractor has no liability.

These facts not only make intuitive sense. Moreover, as more contractors replace civilians, more installations across the country are becoming those 38-40% with serious contractor conflicts of interest.

**3. The current belief, particularly in the Army, that the only natural resource management positions that are inherently governmental are located at Major Command and higher levels, is a recipe for disaster.**

The Department of Army has determined that only 14 positions in all of the Army, all at the Major Command and higher levels, are exempt from conversion. That means that hundreds of installations will have no professional, governmental staff to provide hands-on management and make the daily decisions that impact training. Budget priorities will have to be set by the contractor for himself with little oversight from the gutted Natural Resources staff at the Major Commands. Is it possible that all contractors can be trusted to prepare an accurate, efficient budget for themselves each year?

**4. The inherently governmental nature of natural resource management is recognized and written into the Sikes Act (16 U.S.C. 670 *et seq.*) and into the following regulations: 32 CFR Part 190, 32 CFR Part 169, DODINST 4715.3, DODD 4100.15, and OMB Circular A-76, OFPP Policy Letter 92-1.**

The Department of Defense (DOD), through its various service branches, is the responsible agency for approximately 25 million acres of federal lands located within the United States boundary. And as such, the natural and cultural resources contained on those lands – the soils, waters, air, flora, fauna, historical and archeological artifacts – are held by DOD in the public trust.

This gives the service branches a second mission: protecting and maintaining those resources. With this added mission went the responsibility of ensuring that the resources would not be irreparably harmed or lost while the branches completed their primary missions. Congress made the second mission into law with the passage of the Sikes Act in 1960 (16 U.S.C. 670 *et seq.*). The Sikes Act states,

“(d) Implementation and enforcement of plans.

With regard to the implementation and enforcement of integrated natural resources management plans agreed to under subsection (a) of this section -

- (1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement;
- (2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish and wildlife.”

The legislative history for the Sikes Act (H.R. Rep. No. 129(I), 99<sup>th</sup> Congress, 1<sup>st</sup> Session (1985)) makes clear the drafters’ intent that DOD natural resource managers provide the requisite services necessary to develop, manage, and implement natural resources objectives to the extent feasible on DOD lands:

“While certain labor-intensive activities can be performed effectively by the private sector, fish and wildlife management and policy related activities are inherently governmental responsibilities which the Committee believes are best handled by the qualified individuals within the Department of Defense, the Department of Interior, or appropriate state agencies...”

In the event the Department of Defense elects to provide [implementation and enforcement] services through contract, the U.S. Fish and Wildlife Service or the appropriate state fish and wildlife agency should receive priority consideration for the award of these contracts...”

Some ‘labor intensive activities’ which may be contracted out would include data collection, construction of roads, trails and fences, harvest or planting of forests, pest control, construction and maintenance of recreational facilities, grounds maintenance, and even the conducting of ecosystem management studies. However, a DOD natural resource professional at the installation level must independently evaluate such projects and take full responsibility for their scope, consequences and compliance with all applicable federal and state statutes, DOD directives and the instructions of the various services. This is not a function that can be delegated to a contractor. In addition, DOD natural resource managers are responsible for developing their own long-term plans and policies for the management of their natural resources. This is also not contractible. However such planning need not be carried out in a vacuum, and the planning process can be assisted with studies and recommendations made by private sector professionals if it is not feasible to obtain such assistance from federal and state agencies. The

key distinction is between such things as “labor intensive activities”, such as gathering information and making recommendations versus the making of decisions, involving management and the establishment of policies. The former “labor intensive” activities may be contracted out, the latter may not.

Congress also recognized that accountability for any harm caused to natural and cultural resources entrusted to DOD must remain with the government. They specified that if DOD finds that it is not practicable to have a natural resources program at an installation, then the US Fish & Wildlife Service or the individual state natural resources agency has first option on management, regardless of cost. The drafters of the Sikes Act realized that without trained government natural resources employees over-seeing contracted work, decisions could be made harming the public trust resources. Then the installation commander could blame the contractor while absolving himself, abrogating his public trust responsibility.

DOD recognized its Sikes Act responsibilities in (32 CFR Part 190, *Natural Resources Management on Defense Lands*) which states “the management and conservation of the natural resources under DOD stewardship is **an inherently governmental function**. Therefore, 32 CFR part 169 [CA program] does not apply to the management, implementation, planning, or enforcement of DOD natural resources programs. However, support to the natural resources program when it is severable from management of natural resources may be subject to 32 CFR Part 169.”

DOD Instruction 4715.3 “Environmental Conservation Program” states that “the management and conservation of natural and cultural resources under DOD control, including planning, implementation, and enforcement functions, are inherently governmental functions that shall not be contracted.”

32 CFR Part 169 “Commercial Activities Program”, which is not a natural resource regulation, says essentially the same thing: “Natural resources planning and management is a governmental function and will not be reported”.

DOD Directive 4100.15 “Commercial Activities Program” states the same: “This Directive ... does not apply to DOD governmental functions as defined in enclosure 2.” “Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DOD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DOD personnel.” Enclosure 2 specifically defines “regulation of the use of ... natural resources” and “management of natural resources on Federal property” as a DOD governmental function, an “act of governing”, and “the discretionary exercise of governmental authority”.

Even the Office of Federal Procurement Policy (OFPP) Policy Letter 92-1 referenced in OMB Circular A-76 says the same thing. Its Appendix A lists functions considered inherently governmental: “determining what Government property is to be disposed of and on what terms [natural resource managers determine which trees, i.e. Government property, will be sold and when], “determining what supplies or services are to be acquired by the Government” [natural resource managers must plan for and implement acquisition, taking responsibility for the decisions and their effect on the environment], “administering and terminating contracts” [ a natural resource manager must assume responsibility for protecting the land and its resources while administering many technical contracts such as timber sales, salvage sales, tree planting, herbicide, road building contracts, erosion repair, fertilization].

## **5. The FAIR Act is general in nature and as such, does not repeal the Sikes Act.**

The Federal Activities Inventory Reform Act Of 1998 requires all executive agencies to submit to Congress an annual listing or inventory of activities that are not inherently

governmental, and to make this inventory available to the public. The FAIR Act defines an activity as inherently governmental when it is so intimately related to the public interest as to mandate performance by Federal employees. **All other activities performed by Federal employees are considered commercial activities and are to be included in the inventory.**

The FAIR Act gives some very general guidelines about what should be considered inherently governmental. The guidelines do not specifically mention the management of natural resources on military installations as being an inherently governmental function. The Act does mention three functions that apply to natural resources managers: (1) "activities that require the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government; (2) the interpretation and execution of the laws of the United States so as to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise; (3) the interpretation and execution of the laws of the United States so as to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible including the collection, control, or disbursement of appropriated and other Federal funds."

Natural resources managers (1) Decide on management plans that affect the resources and military training; (2) Interpret laws and apply them in management plans and installation instructions and policies; (3) Interpret laws to justify funding, disburse funds, write and administer contracts, and dispose of millions of dollars in timber sales.

A fundamental rule of law is that the legislation of a general policy nature, such as the FAIR Act, does not supersede and negate a law of great specificity, narrow application, and clear direction, such as the Sikes Act (16 U.S.C. Part 670 et seq.). To the contrary, the specific law takes precedence over the general law. It does not matter which law came last, the newer law more general law must specifically repeal the provisions of the specific law in order to override it.

The Army and Air Force, in their hurry to jettison civilian positions by the thousands, have neglected to do their legal homework and assumed that they could with impunity contract positions not specifically mentioned in the very general guidelines found in the FAIR Act and have ignored the clear direction of the Sikes Act. The Sikes Act states, "(d) Implementation and enforcement of plans.

With regard to the implementation and enforcement of integrated natural resources management plans agreed to under subsection (a) of this section -

- (3) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement;

Such a provision grew out of many years of Congressional hearings into how DOD was failing to adequately provide enough professional natural resources managers to implement the plans Congress had directed to DOD to develop, let alone to perform the studies and provide the protection required by law.

**6. The A-76 process is being ignored in order to achieve arbitrary conversion goals for the federal workforce. Inherently governmental functions, such as natural resources management, are being "bundled" with commercial activities in one large contract.**

The FAIR Act mandates a top-down approach to contracting. Nearly all functions at the installation level are assumed to be commercial in nature by the bureaucrats in the Pentagon with no input from the installation. Once they are listed for study, no effort is made to break out the inherently governmental functions. To take an inherently governmental position off the list officials at the commands and installations must put another position under study to keep the numbers of positions at the preset target level. Therefore to ease the tremendous paperwork load associated with A-76 study, natural resources management, long recognized by Congress through the Sikes Act as inherently governmental, is being "bundled" with facilities maintenance

and base support functions that are commercial in nature. Since the current process allows DOD agencies to review their own decisions regarding which positions to review and which to exempt from the process, the ultimate decisions are driven by arbitrary numerical goals established by Pentagon.

**7. The entire A-76 and FAIR Act process is shrouded in secrecy, bogged in bureaucracy, and cloaked in uncertainty about actual money saved.**

The third DOD slide presented on the GAO website show a projected \$11.7 billion savings over the 9 years from FY97 to FY05. However, less than a billion in savings has occurred to date with the remaining \$11 billion savings still only projected. The twelfth slide goes on to admit that a "Primary Obstacle" has been the "lack of Activity Based Costing means the FTE reduction is the only way to measure or monitor program implementation. Lack of ABC fuels criticism that savings are not real." No one knows if there really is a savings from outsourcing.

The National Military Fish and Wildlife Association has attempted to gather information on what natural resource positions DOD considers eligible for outsourcing. NMFWA sent Freedom of Information Act requests to all service headquarters and major commands, simply asking that.

The Navy and Marine Corps responded quickly. While the Navy's official position is clear that they do not intend to outsource natural resource management, there are individual bases that have outsourced or are attempting to outsource all natural resources positions.

The Air Force answered the FOIA request in different ways depending on the command. Some commands claimed no natural resources positions existed, although in fact they do. In some major commands, outsourcing of natural resources is not overtly approved, while in others, it is virtually forced. Yet even in the major commands where it is not approved, some isolated installations outsource seemingly with impunity.

The Army delayed a year, March 2000 to Feb 2001, shuffling the request from one office to the next, then demanded a change in the scope of the request. Despite repeated attempts by two subsequent NMFWA presidents to narrow the scope, the Army dropped the FOIA request. However, they have publicly stated their case on outsourcing. The Army is pursuing the outsourcing of natural resource management on every installation.

The inconsistency and lack of hard information has made it hard to know where the multiple-headed snake called outsourcing would strike. Apparently, either no one in the Army or Air Force knows the answers or they did not dare to reveal them. Even Congressman Don Young had no substantive response to his inquiry to the Secretary of Defense! (See attached letter from Congressman Young).

**8. If DOD is allowed to contract natural resources management functions, then all National Parks and Forests and Wildlife Refuges could be farmed out to contractors with a profit motive rather than a public servant attitude.**

NMFWA sees A-76 as a threat to all public and Federal lands. If DOD is allowed to contract natural resources and land management functions, despite the complexity of balancing protection with the military mission, then there is little within the Departments of Interior or Agriculture that could not be contracted. If we do not want to see our National Parks, Forests, and Wildlife Refuges managed by contract for profit, rather than for the long-term good of the American people, then we must also make sure that our nation's defense lands are also managed by professional government staffs.

**Attachments (sent as separate documents):**

32 CFR Part 190 "Natural Resources Management"  
32 CFR Part 169a "Commercial Activities Program"  
DODINST 4715.3 "Environmental Conservation Program"

Letter dated 17 July 2000 from Congressman Don Young to the Secretary of Defense

Sent as a separate document because of its large size of 1,670 KB

(Regulations are highlighted where germane to the topic of outsourcing natural resources.)

**Point of Contact for further information:**

Jim Copeland  
Government Affairs Committee Chair  
Director-at-Large  
National Military Fish and Wildlife Association

Address: 9125 Mt Carmel Rd  
Meridian, MS 39305

Phone: 601-679-2482 (work)



**TITLE 32--NATIONAL DEFENSE**  
**CHAPTER I--OFFICE OF THE SECRETARY OF DEFENSE**  
**PART 190--NATURAL RESOURCES MANAGEMENT PROGRAM--Table of Contents**

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**Sec. 190.1 Purpose.**

This part.

(a) Replaces DoD Directive 4700.1.1\

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1\ Canceled by DoD Directive 4700.4.  
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(b) Supersedes 32 CFR parts 232, 233, 234, and 217.

(c) Implements 16 U.S.C. 1531 et seq., 16 U.S.C. 670 et seq., 10 U.S.C. 2665, 10 U.S.C. 2667(d), 10 U.S.C. 2671, and 16 U.S.C. 460(l).

(d) Prescribes policies and procedures for an integrated program for multiple-use management of natural resources on property under DoD control.

**Sec. 190.2 Applicability and scope.**

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Joint Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

(b) Governs DoD management of natural resources in the United States and its territories and possessions for both appropriated and nonappropriated fund activities.

(c) Does not govern natural resources management at State-owned National Guard installations. Nothing contained in this part nor in implementing documents or agreements shall modify rights granted by treaty to Indian tribes or their members.

(d) Does not apply to the civil works functions of the Army.

**Sec. 190.3 Definitions.**

**Agricultural Outlease.** Use of DoD lands under a lease to an agency, organization, or person for growing crops or grazing animals.

**Carrying Capacity (Outdoor Recreation).** The maximum amount of recreation activity and number of participants that a land or water area can support in manner compatible with the

objectives of the natural resources management plan and without degrading existing natural resources.

**Carrying Capacity (Wildlife).** The maximum density of wildlife that a particular area or habitat will support on a sustained basis without deterioration of the habitat.

**Conservation.** Wise use and management of natural resources to provide the best public benefits and continued productivity for present and future generations.

**Cooperative Plan.** The component of the natural resources management plan that describes how fish and wildlife resources at an installation shall be managed and that has been coordinated with U.S. Fish and Wildlife Service and the appropriate State agency. It provide for:

- (a) Fish and wildlife habitat improvements or modifications.
- (b) Range rehabilitation where necessary for support of wildlife.
- (c) Control of off-road vehicle traffic.
- (d) Specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered.

**Critical Habitat.** A specific designated area declared essential for the survival of a protected species under authority of the Endangered Species Act.

**Endangered or Threatened Species.** A species of fauna or flora that has been designated by the U.S. Fish and Wildlife Service for special protection and management pursuant to the Endangered Species Act.

**Forest Products.** All plan materials in wooded areas that have commercial value.

**Game Species.** Fish and Wildlife that may be harvested in accordance with Federal and State laws.

**Grounds.** All land areas not occupied by buildings, structures, pavements, and railroads.

**Habitat.** An area where a plant or animal species lives, grows, and reproduces, and the environment that satisfies any of their life requirements.

**Multiple-Use.** The use of natural resources for the best combination of purposes to meet the needs of the military and the public.

**Natural Resources.** Land, water, and their associated flora and fauna.

**Natural Resources Management Professional.** Individual with an undergraduate or graduate degree in a natural resources-related science and who has responsibility for managing natural resources on a regular basis.

**Nongame Species.** Species not harvested for recreation or subsistence purposes.

**Noxious Weeds.** Plant species identified by Federal or State Agencies as requiring control or eradication.

**Off-road Vehicle.** A vehicle designed for travel on natural terrain. The term excludes a registered motorboat confined to use on open water and a military, emergency, or law enforcement vehicle during use by an employee or agent of the Government or one of its contractors in the course of employment or agency representation.

**Outdoor Recreation.** Program, activity, or opportunity dependent on the natural environment. Examples are hunting, fishing, trapping, picnicking, birdwatching, off-road vehicle use, hiking and interpretive trails, wild and scenic river use, and underdeveloped camping areas. Developed or constructed facilities such as golf courses, tennis courts, riding stables, lodging facilities, boat launching ramps, and marinas are not included.

**Sustained Yield.** Production of renewable natural resources at a level when harvest or consumptive use does not exceed net growth.

#### **Sec. 190.4 Policy.**

(a) The Department of Defense shall act responsibly in the public interest in managing its lands and natural resources. There shall be a conscious and active concern for the inherent value of natural resources in all DoD plans, actions, and programs.

(b) Natural resources under control of the Department of Defense shall be managed to support the military mission, while practicing the principles of multiple use and sustained yield, using scientific methods and an interdisciplinary approach. The conservation of natural resources and the military mission need not and shall not be mutually exclusive.

(c) Watersheds and natural landscapes, soils, forests, fish and wildlife, and protected species shall be conserved and managed as vital elements of DoD's natural resources program.

(d) DoD actions that affect natural resources in the United States shall comply with the policy and requirements of 32 CFR part 188 and the more stringent of applicable Federal or local laws. DoD actions that influence natural resources in foreign countries or global commons shall conform to requirements of 32 CFR part 187 applicable laws, treaties, and agreements.

(e) Integrated natural resources management plans that incorporate applicable provisions of the Appendix to this part shall be maintained for DoD lands.

(f) DoD decisionmakers and commanders shall keep informed of the conditions of natural resources, the objectives of natural resources management plans, and potential or actual conflicts between DoD actions and management plans and the policies and procedures herein.

(g) DoD lands shall be available to the public and DoD employees for enjoyment and use of natural resources, except when a specific determination has been made that a military mission prevents such access for safety or security reasons or that the natural resources will not support such usage. The determination shall be addressed in the applicable natural resources management plan. To assist in the management, study, or monitoring of natural resources, Federal, State and local officials and natural resources management professionals shall be permitted access to natural resources after proper safety and security measures are taken.

**(h) The management and conservation of natural resources under DoD stewardship is an inherently governmental function. Therefore, 32 CFR part 169 does not apply to the management, implementation, planning, or enforcement of DoD natural resources programs. However, support to the natural resources program when it is severable from management of natural resources may be subject to 32 CFR part 169.**

(i) If natural resources under DoD control are damaged by a hazardous substance released by another party, that party is potentially liable. The funds recovered by the Department of Defense as a result of natural resources damage claims shall be used for restoration, replacement, or acquisition of equivalent natural resources.

(j) Enforcement of laws primarily aimed at protecting natural resources and recreation activities that depend on natural resources is an integral part of a natural resources program and shall be coordinated with or under the direction of the natural resources manager for the affected area.

#### **Sec. 190.5 Responsibilities.**

- (a) The Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) shall:
- (1) Establish and monitor implementation of natural resources management policies for DoD properties and actions.
  - (2) Coordinate the DoD natural resources program with other Federal Agencies.
  - (3) Maintain the Secretary of Defense Natural Resources Conservation Awards Program established herein and described in DoD Instruction 4700.2 \2\

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      \2\ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.  
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(4) Designate a chairperson for the DoD Natural Resources Council (DNRC) established in paragraph (b) of this section.

(5) Establish policy and direction for the DoD reserve account established by 10 U.S.C. 2665.

(b) The Director, Defense Research and Engineering, through the Deputy Under Secretary of Defense (Research and Advanced Technology) (DUSD(R&AT)), shall conduct appropriate research, development, tests, and evaluations to support integrated natural resources management programs.

**(c) The Heads of the Military Services and Directors of Defense Agencies delegated land management responsibilities shall:**

**(1) Maintain an organizational capability and program resources necessary to establish and maintain integrated natural resources management programs as prescribed in this part.**

**(2) Maintain at all levels of command the interdisciplinary natural resources expertise necessary to implement this program and provide for their continued professional training.**

**(3) Ensure that effective natural resources management is an identifiable function and is specifically accountable in performance evaluations at each command level.**

(4) Provide for technical reviews and onsite assessments of installations' natural resources programs at least each 3 years by natural resources management professionals, take necessary corrective actions, and include natural resources programs in management reviews.

(5) Develop criteria and procedures for cooperative planning and integrated natural resources management planning processes.

**(6) Act as trustees for natural resources under their jurisdiction.**

(7) Maintain records necessary to monitor and evaluate natural resources under their management and provide requested information to the ASD(P&L), other agencies with jurisdiction, and the public.

(d) The Heads of DoD Components shall coordinate proposals for new and continuing actions that affect natural resources with the managers of those resources.

**(e) Installation Commanders shall:**

**(1) Conduct integrated natural resources management programs to comply with this part.**

**(2) Enter into cooperative plans that may be developed on behalf of the Secretary of Defense pursuant to the Sikes Act.**

#### **Sec. 190.6 Procedures.**

**(a) Procedures shall be established by DoD Components to ensure that current and planned mission activities (e.g., master planning, construction requests, site approval requests, and training exercise plans) are effectively coordinated in a timely manner with appropriate natural resources managers.**

(b) The DNRC shall advise the ASD(P&L) regarding natural resources issues and shall meet at least quarterly. DoD Components shall participate to carry out this Directive and goals of the DoD natural resources program. The Heads of the Military Services each shall appoint one representative and one alternate to the DNRC. The DNRC shall:

(1) Provide technical support to the ASD(P&L) in natural resources areas.

(2) Recommend policy and program improvements.

(3) Assist in conducting the Secretary of Defense Natural Resources Conservation Awards Program.

(4) Coordinate the natural resources management program among DoD Components.

(5) Conduct periodic natural resources conferences or training opportunities for DoD employees.

(6) Identify and coordinate natural resources research activities and needs and present them to the DUSD(R&AT) each year.

## **Sec. 190.7 Information requirements.**

Information requirements of the ASD(P&L) shall be met by the Heads of the Military Services each year by January 15 under Report Control Symbol DD-P&L(A)1485.

(Appendix follows)

### **Appendix--Integrated Natural Resources Management**

#### **A. Integrated Planning**

1. Integrated natural resources management plans shall be maintained for properties under DoD control. These plans shall guide planners and implementors of mission activities as well as natural resources managers.

2. The plans shall be coordinated with appropriate Federal, State, and local officials with interest or jurisdiction in accordance with 32 CFR part 243 and with planners of DoD activities that impact on the natural resources. Conversely, new and continuing mission activities that impact on natural resources shall be coordinated with appropriate natural resources managers.

3. Natural resources management plans shall be continually monitored, reviewed annually, and revised by DoD natural resources management professionals. They shall be approved in accordance with DoD Components' procedures at least every 5 years.

4. The natural resources management planning process shall invite public participation.

5. An integrated natural resources management plan shall meet the following criteria:

a. Natural resources and areas of critical or special concern are adequately addressed from both technical and policy standpoints.

b. The natural resources management methodologies shall sustain the capabilities of the natural resources to support military requirements.

c. The plan includes current inventories and conditions of natural resources; goals; management methods; schedules of activities and projects; priorities; responsibilities of installation planners and decisionmakers; monitoring systems; protection and enforcement systems; and land use restrictions, limitations, and capabilities.

d. Each plan segment or component (i.e., land, forest, fish and wildlife, and outdoor recreation) exhibits compatible methodologies and goals.

e. The plan is compatible with the installation's master plan and pest management program under DoD Directive 4150.7.\1\

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\\ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.  
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6. A determination that the public may not have access to use natural resources under DoD control shall be included and explained in the applicable integrated natural resources management plan.

7. The environmental impact analysis for any proposed activity or project shall include an analysis of the compatibility of the proposal's impacts with affected natural resources management plans and objectives. Only after necessary revisions to management plans are made shall the new activity begin.

8. The planning requirements of DoD Directive 4710.1 \2\ may be met within the integrated natural resources plan.

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\2\ See footnote 2 to paragraph A.5.e.

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9. Integrated natural resources management plans shall be a primary consideration during the master planning process and for land use and development decisions.

#### **B. Natural Resources Management Plan**

The integrated natural resources plan shall implement the following policies and requirements for each applicable program area:

##### **1. Land Management**

a. DoD lands shall be managed to support military activities, improve the quality of land and water resources, protect wetlands and floodplains and their functions, abate nonpoint sources of water pollution, conserve lands suitable for agriculture, control noxious weeds, and control erosion.

b. Costs for maintaining grounds shall be minimized by providing the least amount of mowed areas and special plantings necessary to accomplish management objectives and by the use of low maintenance species, agricultural outleasings, wildlife habitat, and tree plantings.

c. Land management is an important use of appropriated funds. Also, pursuant to 10 U.S.C. 2667(d) revenues from the agriculture and grazing outlease program are available for:

- (1) Administrative expenses of agricultural leases.
- (2) Initiation, improvement, and perpetuation of agricultural outleasings.
- (3) Preparation and revisions of natural resources management plans.
- (4) Implementation of integrated natural resources management plans.

d. When appropriate, land management plans shall address soils, water resources, soil and water conservation, wetlands and floodplains, grounds maintenance, landscaping, agricultural uses and potential, fire management, rangeland conditions and trends, areas of special interest, and management for multiple use.

e. Soil capabilities, water management, landscaping, erosion control, and conservation of natural resources shall be included in all site feasibility studies and in project planning, design, and construction. Appropriate conservation work and associated costs shall be included in project proposals and construction contracts and specifications. Such studies and work shall be coordinated with appropriate natural resources management professionals and plans.

f. Irrigation shall be limited to areas where it is essential to establish and maintain required vegetation or when an agricultural outlease contract allows it.

g. Appropriate natural resources conservation measures shall be included in outlease provisions.

h. Landscaping shall be functional in nature, simple and informal in design, compatible with adjacent surroundings, and complimentary to the overall natural setting of the area.

i. Land conditions, soil capability, and erosion status shall be monitored for all lands subject to disturbance (e.g., maneuver areas, commercial forest areas, and agricultural outleased areas). The data and analyses obtained shall be used in planning, environmental analyses, and decisionmaking at all levels of command.

## **2. Forest Management**

a. DoD forest lands shall be managed for sustained yield of quality forest products, watershed protection, wildlife habitat, and other uses that can be made compatible with mission activities.

b. Commercial forestry activities shall be commensurate with potential financial returns.

c. Forest products shall not be given away, abandoned, carelessly destroyed, used to offset costs of contracts, or traded for products, supplies, or services. Forest products may be used for military training. Individuals may be allowed to collect noncommercial or edible forest products if that use is addressed in the management plan for the areas involved. Forest products may be harvested to generate electricity or heat only if the Military Department's forestry account is paid fair market value.

d. Planned forest products sales shall continue on land reported as excess until actual disposal or transfer occurs. When forested areas are slated to be public parks or used for outdoor recreation, clearcutting is prohibited. However, thinning, intermediate cuttings, and salvage cuttings shall be accomplished if the management plan calls for such activity within the next 5 years. That portion of the proceeds from sales of land that is attributable to the value of standing timber on the land sold shall be deposited in the Military Department's forestry account.

e. Accounting and reporting for the proceeds and costs of the commercial forestry program are contained in DoD Instruction 7310.5.\3\ Costs associated with management of all forested areas (noncommercial and commercial) are valid uses of appropriated funds as well as proceeds from agricultural outleases and forest product sales.

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\\3\ See footnote 2 to paragraph A.5.e.  
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f. When appropriate, natural resources management plans shall include current forest inventories, conditions, trends, and potential uses; analysis of soil data for forest potential; goals; protection and enforcement methods; maintenance of forested areas and access roads; improvement methods; harvesting and reforestation methods and schedules; and management for multiple use.

## **3. Fish and Wildlife Management**



a. Lands and waters suitable for management of fish and wildlife resources shall be managed to conserve wildlife resources for the benefit of the public. Nongame as well as game species shall be considered when planning activities.

b. Endangered and threatened species and their habitats shall be protected and managed according to the Endangered Species Act and implementing U.S. Fish and Wildlife Service (FWS) regulations and agreements. Management plans for installations with endangered species shall include:

- (1) Coordinated protection and mitigation measures.
- (2) Appropriate affirmative methods and procedures necessary to enhance the population of endangered species.
- (3) Procedures and responsibilities for consulting with the FWS prior to funding or conducting any action likely to affect a listed species or its critical habitat.

c. The Sikes Act provides a mechanism whereby the Departments of Defense and the Interior and host States cooperate to plan, maintain, and manage fish and wildlife on military installations. Agreement by all 3 parties regarding the fish and wildlife management plan for an installation makes that plan a cooperative plan pursuant to 16 U.S.C. 670 et seq. A cooperative plan shall be adopted by an installation commander only after ensuring its compatibility with the rest of the integrated natural resources management plan.

d. Hunting, fishing, and trapping may be permitted within the carrying capacity of wildlife habitats. Harvesting of wildlife from DoD installations or facilities shall be done according to the fish and game laws of the State or territory in which it is located and under 10 U.S.C. 2671. Special permits shall be issued, in addition to required State and Federal permits or licenses, for fishing, hunting, or trapping on DoD property.

e. Hunting, fishing, and trapping fees may be collected under the authority of the Sikes Act to recover expenses of implementing a cooperation plan. The same Sikes Act fee shall be charged for a particular use to all users at a particular installation except senior citizens, children, and the physically handicapped. Exceptions to this policy may be granted by the Heads of Military Services. Additional recreation fees may be collected under policies in DoD Directive 1015.6 \4\ and DoD Instruction 1015.2.\5\

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\4\ See footnote 2 to paragraph A.5.e.

\5\ See footnote 2 to paragraph A.5.e.  
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f. Criteria and procedures for hunting, fishing, and trapping permits and fees shall be included in management plans. Fees collected under the authority of 16 U.S.C. 670 et seq. shall be used only to defray the costs of the fish and wildlife management program at the installation collecting the fees. Collected fees shall be accounted for and reported according to instructions from the Comptroller, Department of Defense (C, DoD), under a special fund entitled ``Wildlife Conservation"--X5095. Unobligated balances shall be accumulated with current fee collections, and the total amount accumulated at an installation shall be available for obligation as apportioned by the Office of Management and Budget (OMB).



g. Whenever hunting, fishing, or trapping is allowed on DoD installations, enforcement of wildlife laws shall be addressed in the fish and wildlife management plan and carried out by trained enforcement officials under the direction of or in coordination with the wildlife manager.

h. The suitability of a military installation for fish and wildlife management shall be determined after consulting with the FWS and host State. Each installation shall be classified as one of the following:

(1) Category I--Installations with land and water resources suitable for fish and wildlife conservation. Each Category I installation shall maintain a wildlife management plan according to this part.

(2) Category II--Installations that lack adequate land and water resources for feasible fish and wildlife conservation.

i. The number of users of fish and wildlife resources may be limited on a daily or seasonal basis. Membership in an organization, including rod and gun clubs, shall not be a prerequisite for or get priority in receiving permits.

j. Habitat management is the basic means of improving wildlife resources. Introduction and reintroduction of species shall occur only in coordination with appropriate agencies and in accordance with a cooperative plan. When predator or animal damage control is a necessary part of natural resources management or mission performance, it shall be accomplished according to the cooperative plan, relevant laws and regulations, and in coordination with adjoining land managers.

k. Fish and wildlife conservation shall be considered in all site feasibility studies and project planning, design, and construction. Appropriate conservation work and associated funding shall be included in project proposals and construction contracts and specifications.

**l. Priority shall be given to entering into contracts for services that implement wildlife management or enforce wildlife laws with Federal and State Agencies with responsibility for wildlife conservation.**

m. Where appropriate, natural resources management plans shall address habitat management and enhancement, current wildlife and fish inventories and population trends, endangered and other special species management, game and nongame species management, access policy and user program, administration of user fee program, law enforcement, cooperating agencies' responsibilities, and multiple use management.

#### **4. Outdoor Recreation**

a. Whenever practicable, DoD lands with suitable resources shall be managed to conserve and use natural resources for the outdoor recreation opportunities of present and future generations. The policies and procedures herein apply to outdoor recreation programs as defined in Sec. 190.3 and supersedes those in DoD Directive 1015.6 and DoD Instruction 1015.2.

b. Conservation of outdoor recreation resources shall be considered in all plans, programs, site feasibility studies, and project planning and design.

c. Installations having resources suitable for outdoor recreation other than hunting, fishing, and trapping are encouraged to develop cooperative agreements or plans with other Federal Agencies and appropriate State Agencies to facilitate the development and management of those programs.

d. Public access to DoD properties for outdoor recreation shall be allowed whenever compatible with public safety and mission activities. User fees may be collected to recover expenses of managing natural resources for outdoor recreation, and access quotas may be established to reflect the carrying capacity of the areas involved. Public outdoor recreation opportunities shall be equitably distributed by impartial procedures, such as a first-come, first-served basis or by drawing lots.

When public access must be withheld, that determination shall be explained in the natural resources management plan.

e. Off-road vehicle use shall be managed to protect natural resources, promote safety, and avoid conflicts with other uses of DoD properties. Use of off-road vehicles shall be monitored and evaluated regularly by natural resources management professionals. All land and water areas shall be closed to such use unless an environmental impact analysis in accordance with 32 CFR part 188 has been completed and the use is specifically approved and regulated.

Specific areas that shall not be used by recreational off-road vehicles are those:

- (1) Restricted for security or safety purposes.
- (2) Containing fragile geological and soil conditions, flora or fauna, or other natural characteristics.
- (3) With significant archeological, historical, paleontological resources.
- (4) Designated as wilderness or scenic areas.
- (5) Where noise would adversely affect other users, wildlife, or adjacent communities.

f. Whenever appropriate, outdoor recreation plans shall address inventories, trends, and management of resources suitable for outdoor recreation; aesthetics; development of opportunities and potential uses; potential user groups and access policy; user fee program; user ethics programs; and multiple use management.

## **5. Special Areas**

Areas on DoD installations that contain natural resources that warrant special conservation efforts shall be identified. After appropriate study and coordination, such areas may be designated as Special Interest Areas. Upon such designation, the integrated natural resources management plan for the installation shall address the special management necessary for the area.

[54 FR 7539, Feb. 22, 1989. Redesignated and amended at 56 FR 64481, Dec. 10, 1991]

Title 32 Code of Federal Regulations (32 CFR)

Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec.

169.1 Purpose.

169.2 Applicability and Scope.

169.3 Definitions.

169.4 Policy.

169.5 Responsibilities.

AUTHORITY: 5 U.S.C. 301 and 552 and Pub. L. 93–400.

SOURCE: 54 FR 13373, Apr. 3, 1989, unless otherwise noted.

§ 169.1 Purpose.

This document:

(a) Revises 32 CFR part 169.

(b) Updates DoD policies and assigns responsibilities for commercial activities

(CAs) as required by E.O. 12615, Pub. L. 100–180, sec. 1111, and OMB Circular A–76.

§ 169.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as “DoD Components”).

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities.

When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by non-appropriated funds.

(d) Does not apply to DoD governmental functions as defined § 169.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33 1 (32 CFR part 169a).

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees, as described in FAR 37.104.

§ 169.3 Definitions.

*Commercial Activity Review.* The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

*Commercial Source.* A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

*Conversion to Contract.* The change-over of a CA from performance by DoD personnel to performance under contract by a commercial source.

*Conversion to In-House.* The change-over of a CA from performance under contract to performance by DoD personnel.

**Core Logistics.** Those functions identified as core logistics activities pursuant to section 307 of Pub. L. 98–525 and section 1231 of Pub. L. 99–145, codified at section 2464, title 10 that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situation, and other emergency requirements.

**Cost Comparison.** The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in DoD Instruction 4100.33 to the cost of performance by contract.

**Direct-Conversion.** Conversion to contract performance of an in-house commercial activity based on a simplified cost comparison or the conversion of an in-house commercial activity performed exclusively by military personnel.

**Displaced DoD Employee.** Any DoD employee affected by conversion to contract operation (including such actions as job elimination, or grade reduction). It includes both employees in the function converted to contract and employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

**DoD Commercial Activity (CA).** An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA may be the mission of an organization or a function within the organization. It must be type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in enclosure 3 of DoD Instruction 4100.33. A DoD CA falls into one of two categories:

(a) Contract CA. A DoD CA managed by a DoD Component, but operated with contractor personnel.

(b) In-House CA. A DoD CA operated by a DoD Component with DoD personnel.

**DoD Employee.** Civilian personnel of the Department of Defense.

**DoD Governmental Function.** A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions include those that require either the exercise of discretion in applying Government authority or the use of value judgment in making the decision for the Department of Defense. Services or products in support of Governmental functions, such as those listed in enclosure 3 of DoD Instruction 4100.33, are CAs and are subject to this part and its implementing Instructions. Governmental functions normally fall into two categories:

(a) Act of Governing. The discretionary exercise of Governmental authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; management of natural resources on Federal Property; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

(b) Monetary Transactions and Entitlements. Refers to such actions as tax collection and revenue disbursements; control of treasury accounts and the money supply, and the administration of public trusts.

**DoD Personnel.** Military and civilian personnel of the Department of Defense.

**Expansion.** The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A Office of the Secretary of Defense § 169.4 consolidation of two or more CAs is not an expansion, unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

**Installation.** An installation is the grouping of facilities, collocated in the same vicinity, that supports particular functions. Activities collocated and supported by an installation are considered to be tenants.

*Installation Commander.* The commanding officer or head of an installation or a tenant activity, who has budget and supervisory control over resources and personnel.

*New Requirement.* A recently established need for a commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

*Preferential Procurement Programs.* Preferential procurement programs include mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under Pub. L. 92–98. Small, minority, and disadvantaged businesses; and labor surplus area set-asides and awards made under Pub. L. 85–536, section 8(a) and Pub. L. 95–507 are included under preferential procurement programs.

*Right of First Refusal of Employment.*

Contractors provide Government employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

#### § 169.4 Policy.

(a) Ensure DoD Mission Accomplishment. When complying with this part and its implementing Instruction, DoD Components shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) Achieve Economy and Quality through Competition. Encourage competition with the objective of enhancing quality, economy, and performance. When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. The restriction of a solicitation to a preferential procurement program does not negate the requirement to perform a cost comparison. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

(c) Retain Governmental Functions In-House. Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(d) Rely on the Commercial Sector. DoD Components shall rely on commercially available sources to provide commercial products and services except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(e) Delegate Decision Authority and Responsibility. DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.1.<sup>2</sup>

(f) Share Resources Saved. When possible, make available to the installation commander a share of any re-sources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) Provide Placement Assistance. Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

§ 169.5 Responsibilities.

(a) The Assistant Secretary of Defense (Production and Logistics) (ASD (P&L)), or designee, shall:

- (1) Formulate and develop policy consistent with this part for the DoD CA program.
- (2) Issue Instructions to implement the policies of this part.
- (3) Maintain an inventory of in-house DoD CAs and the Commercial Activities Management Information System (CAMIS).
- (4) Establish criteria for determining whether a CA is required to be retained in-house for national defense.
- (5) Approve or disapprove core logistics waiver requests.

(b) The Comptroller of the Department of Defense (C, DoD) shall provide inflation factors and/or price indices and policy guidance to the DoD Components on procedures and systems for obtaining cost data for use in preparing the in-house cost estimate.

(c) The Heads of DoD Components shall:

- (1) Comply with this part and DoD Instruction 4100.33.
- (2) Designate an official at the Military Service Assistant Secretary level, or equivalent, to implement this part.
- (3) Establish an office as a central point of contact for implementing this part.
- (4) Encourage and facilitate CA competitions.
- (5) Delegate, as much as practicable, broad authority to installation commanders to decide how best to use the CA program to accomplish the mission. Minimally, as prescribed by P.L. 100–180, section 1111 and E.O. 12615, installation commanders shall have the authority and responsibility to carry out the following:
  - (i) Prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation in accordance with DoD Instruction 4100.33.
  - (ii) Decide which commercial activities shall be reviewed under the procedures and requirements of E.O. 12615, OMB Circular A–76, and DoD Instruction 4100.33. This authority shall not be applied retroactively. Cost comparisons and direct conversions initiated, as of December 4, 1987, shall be continued.
  - (iii) Conduct a cost comparison of those commercial activities selected for conversion to contractor performance under OMB Circular A–76.
  - (iv) To the maximum extent practicable, assist in finding suitable employment for any DoD employee displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.
- (6) Develop specific national defense guidance consistent with DoD Instruction 4100.33.
- (7) Establish administrative appeal procedures consistent with DoD Instruction 4100.33.
- (8) Ensure that contracts resulting from cost comparisons conducted under this part are solicited and awarded in accordance with the FAR and the DFARS.
- (9) Ensure that all notification and reporting requirements established in DoD Instruction 4100.33 are satisfied.
- (10) Ensure that the Freedom of Information Act Program is complied with in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement.
- (11) Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the CA inventory and conducting the reviews and cost comparisons.
- (12) Provide, when requested, assistance to installation commanders to ensure effective CA program implementation and technical competence in management and implementation of the CA program.
- (13) Ensure that maximum efforts are exerted to assist displaced DoD employees in finding suitable employment, to include, as appropriate:
  - (i) Providing priority placement assistance for other Federal jobs.
  - (ii) Training and relocation when these shall contribute directly to placement.
  - (iii) Providing outplacement assistance for employment in other sectors of the economy with particular attention to assisting eligible employees to exercise their right of first refusal with the successful contractor.
- (14) Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

(15) Ensure, once the cost comparison is initiated, that the milestones are met, and completion of the cost comparison is without unreasonable delay.

1 Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

2 See footnote 1 to § 169a.1(a).

3 Copies may be obtained if needed, from the Office of Management and Budget, Executive Office Building, Washington, DC 20503.

4 See footnote 1 to § 169a.1(a).

## PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

### Subpart A—General

#### Sec.

169a.1 Purpose.

169a.2 Applicability and scope.

169a.3 Definitions.

169a.4 Policy.

### Subpart B—Procedures

169a.8 Inventory and review schedule (Reports Control Symbol DD–P&L(A)).

169a.9 Reviews: Existing in-house commercial activities.

169a.10 Contracts.

169a.11 Expansions.

169a.12 New requirements.

169a.13 CAs involving forty-five or fewer DoD civilian employees.

169a.14 Military personnel commercial activity.

169a.15 Special considerations.

169a.16 Independent review.

169a.17 Solicitation considerations.

169a.18 Administrative appeal procedures.

169a.19 Study limits.

### Subpart C—Reporting Requirements

169a.21 Reporting requirements.

169a.22 Responsibilities.

## APPENDIX A TO PART 169A—CODES AND DEFINITIONS OF FUNCTIONAL AREAS

## APPENDIX B TO PART 169A—COMMERCIAL ACTIVITIES INVENTORY REPORT AND FIVE-YEAR REVIEW SCHEDULE

## APPENDIX C TO PART 169A—SIMPLIFIED COST COMPARISONS FOR DIRECT CONVERSION OF CAS

## APPENDIX D TO PART 169A—COMMERCIAL ACTIVITIES MANAGEMENT INFORMATION SYSTEM (CAMIS)

AUTHORITY: 5 U.S.C. 301 and 552.

SOURCE: 50 FR 40805, Oct. 7, 1985, unless otherwise noted.

### Subpart A—General

§ 169a.1 Purpose.

This part:

(a) Reissues DoD Instruction 4100.33<sup>1</sup> to update policy, procedures, and responsibilities required by DoD Directive 4100.15<sup>2</sup> and OMB Circular A–76<sup>3</sup> for use by the Department of Defense (DoD) to determine whether needed commercial activities (CAs) should be accomplished by DoD personnel or by contract with a commercial source.

(b) Cancels DoD 4100.33–H,4 “DoD In-House vs. Contract Commercial and Industrial Activities Cost Comparison Handbook.”

§ 169a.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies and DoD Field Activities (hereafter referred to collectively as the “DoD

Components").

(b) Contains DoD procedures for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are

Department of Defense

INSTRUCTION

NUMBER 4715.3

May 3, 1996

USD (A&T)

SUBJECT: Environmental Conservation Program

References: (a) DoD Directive 4715.1, "Environmental Security," February 24, 1996

(b) DoD Directive 6050.16, "DoD Policy for Establishing and Implementing Environmental Standards at Overseas Installations," September 20, 1991

(c) Overseas Environmental Baseline Guidance Document, October 19921

(d) Sections 1531, 1996 and 4341 of title 42, United States Code

(e) through (gg), see enclosure 1

#### 1. PURPOSE

This Instruction:

1.1. Implements policy, assigns responsibilities, and prescribes procedures under reference (a) for the integrated management of natural and cultural resources on property under DoD control.

1.2. Authorizes the publication of "A Resource Manager's Guide to Volunteer and Partnership Programs" and "A Guide to Integrated Natural Resources Management."

1.3. Implements references (d) through (gg).

1.4. Establishes the DoD Conservation committee that reports to the Environmental Safety and Occupational Health (ESOH) Policy Board.



1 Available from the Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301-3400

1.5. Designates "DoD Executive Agents" to lead DoD implementation of key conservation issues, as specified in enclosure 2.

## 2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to:

2.1.1. The Office of the Secretary of Defense (OSD); the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities, including any other integral DoD organizational entity or instrumentality established to perform a Governmental function (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

2.1.2. DoD operations, activities, and installations in the United States; U.S. territories, trusts, and possessions; and including Government-owned and contractor-operated facilities. Outside the United States, DoD Directive 6050.16 (reference (b)) shall apply, consistent with international agreements, status of forces agreements, final governing standards (FGS) issued for host nations, or where no FGS have been issued, the criteria under the Overseas Environmental Baseline Guidance Document (reference (c)).

2.1.3. Public lands withdrawn from all forms of appropriation under public land laws and reserved for use by the Department of Defense.

2.2. This Instruction does not apply to the Civil Works function of the Army.

## 3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 3.

## 4. POLICY

4.1. General Conservation Management

4.1.1. All DoD conservation programs shall work to guarantee continued access to our land, air, and water resources for realistic military training and testing while ensuring that the natural and cultural resources

entrusted to DoD care are sustained in a healthy condition for scientific research, education, and other compatible uses by future generations.

4.1.2. All DoD facilities and installations shall within available resources plan, program, and budget to achieve, monitor, and maintain compliance with all applicable Executive orders and Federal natural and cultural resources statutory and regulatory requirements, and State regulations as required by applicable references to this Instruction.

4.1.3. Internal conservation self-assessments shall be conducted at least annually and external conservation self-assessments at least once every 3 years at all installations that require an integrated natural resources management plan (INRMP) and/or an integrated cultural resources management plan (ICRMP). At a minimum, those reviews shall assess adherence to the finding priorities defined in enclosure 4, and the status of the measures of merit defined in enclosure 5. Results should not normally be released to regulators.

4.1.4. The principal purpose of DoD lands and waters is to support mission-related activities. Those lands and waters shall be made available to the public for educational or recreational use of natural and cultural resources when such access is compatible with military mission activities, ecosystem sustainability, and with other considerations such as security, safety, and fiscal soundness. Opportunities for such access shall be equitably and impartially allocated. INRMPs and ICRMPs shall describe areas appropriate for public access.

4.1.5. Native Americans shall have access to DoD sites and resources that are of religious importance, or that are important to the continuance of their cultures (e.g., areas containing traditionally used plants and traditionally used hunting areas), consistent with the military mission, appropriate laws (42 U.S.C. 1996, reference (d)), and regulations, and subject to the same safety, security, and resource considerations as the general public.

4.1.6. Federal or State conservation officials shall be given access to DoD-controlled natural and cultural resources to conduct official business consistent with an installation's operational, security, and safety policies and procedures, and with applicable requirements of laws and regulations (e.g., Section 1531 et seq. of 42 U.S.C. and 36 CFR 60 (references (d) and (e))).

4.1.7. DoD installations may use appropriate partnerships and volunteers to enhance conservation programs when practicable (10 U.S.C. 1588(a)(2), reference (f)).

When practicable, that work shall be performed under the direction of professionally trained natural or cultural resources personnel.

4.1.8. Conventional procurement methods as well as cooperative agreements in accordance with 31 U.S.C. 6301-6308 and 16 U.S.C. 670 et seq. (references (g) and (h)) may be used to accomplish work identified in installation INRMPs. Authority for approving cooperative agreements is hereby delegated to the Secretaries of the Military Departments. This authority may be further delegated to lower echelons of a Military Department at the discretion of the pertinent Secretary.

4.1.9. DoD installations may engage in public awareness and outreach programs to educate the public regarding the resources on military lands and DoD efforts to conserve those resources.

4.1.10. Personnel assigned duties involving natural or cultural resources shall have the appropriate knowledge, skills, and professional training and education to carry out those responsibilities. Necessary supplemental training to ensure that proper and efficient management of those resources shall be provided quickly. Staffing levels and authority adequate to ensure that appropriate resource management and protection shall be provided, in accordance with Section 328 of NDA Report 103-701 and Section 2852 of NDA Report 103-499 (references (i) and (j)).

4.1.11. The natural and cultural resources identified on installations proposed for closure shall be addressed during disposal and reuse planning (e.g., 40 CFR 1500-1508 and Section 4341 of 42 U.S.C., references (k) and (d)).

Conservation easements may be granted on portions of installation real property that have significant ecological, cultural, scenic, recreational, or educational value when specifically authorized (e.g., E.O. 11990 and E.O. 12898, references (l) and (m)). Where appropriate, and in accordance with requirements governing property disposal, the DoD Components shall give consideration to providing excess property to conservation agencies or organizations.

4.1.12. Professional natural and cultural resources staff shall oversee the enforcement of applicable laws as an integral part of an installation's conservation program.

4.1.13. The management and conservation of natural and cultural resources under DoD control, including planning, implementation, and enforcement functions, are inherently Governmental functions that shall not be contracted (DoD 3210.6-R, reference (n)). DoD Components that have contractor-operated installations or facilities shall ensure that contract instruments clearly address contractor and Government functions as they relate to natural and cultural resources.

4.2. Natural Resources Management

4.2.1. Natural resources under the stewardship and control of the Department of Defense shall be managed to support and be consistent with the military mission, while protecting and enhancing those resources for multiple use, sustainable yield, and biological integrity. Land use practices and decisions shall be based on scientifically sound conservation procedures and techniques, and use scientific methods and an ecosystem approach.

4.2.2. INRMPs shall incorporate the principles of ecosystem management (enclosure 6). INRMPs shall be prepared, maintained, and implemented for all lands and waters under DoD control that have suitable habitat for conserving and managing natural ecosystems. Each plan shall contain information needed to make appropriate decisions about natural resources management, including that identified in enclosure 7.

4.2.3. Biologically or geographically significant or sensitive natural resources (e.g., wetlands, forests, floodplains, watersheds, estuaries, riparian areas, coastal barrier islands, marine sanctuaries, critical habitats, animal migration corridors) or species (e.g., threatened or endangered species, certain marine mammals, and migratory birds) shall be inventoried and managed to protect these resources, and to promote biodiversity, using the goals identified in paragraph 6.2.2., below.

4.2.4. Threatened and endangered species management and recovery efforts on DoD lands and waters shall be consistent with Section 1531 et seq. of 42 U.S.C. (reference (d)) and other legal mandates. Procedures to comply with these mandates shall emphasize military mission requirements and interagency cooperation during consultation, species recovery planning, and management activities.

Opportunities to conserve Federally listed species and the ecosystems on which those species depend shall be identified. The Department of Defense shall accept an unequal or disproportionate burden for the conservation of threatened and endangered species only when it is required by legal authority or it has been expressly determined that it is in the Department of Defense's best interest.

4.2.5. DoD lands shall be reviewed for their suitability for commercial forestry and agricultural outlease purposes.

Any such uses must be compatible with use of the land to support the military mission. Forestry and agricultural operations shall also be consistent with long-term ecosystem management goals. Such operations shall be balanced with and used to achieve or maintain other needs for the land, including threatened and endangered species protection, biodiversity conservation, native plant landscaping, watershed protection, wildlife enhancement, outdoor recreation, and natural beauty. Forestry proceeds shall be distributed as in Section 2665 of 10 U.S.C.

and DoD Instruction 7310.5 (references (f) and (o)).

4.2.6. Best management practices shall be used to minimize nonpoint sources of water pollution. DoD actions that might cause nonpoint source pollution, shall be consistent with 32 U.S.C. 1251 et seq. (reference (p)).

4.2.7. DoD operations, activities, projects, and programs that affect the land, water, or natural resources of any coastal zone shall be consistent with Sections 1451 et seq., 3501 et seq., and 1431 et seq. of 16 U.S.C. (reference (h)).

4.2.8. Management measures for the removal or control of exotic species shall be included in installation INRMPs, when applicable.

4.2.9. Environmentally and economically beneficial landscaping practices shall be used on all DoD lands (the Presidential Memorandum and 60 FR 40837, references (q) and (r)). Each installation shall, to the extent practical, use regionally native plants for landscaping and other beneficial techniques.

4.2.10. DoD lands shall be managed for the goal of no net loss of wetlands. DoD operations and activities shall avoid the net loss of size, function, or value of wetlands. Additionally, the Department of Defense will preserve the natural and beneficial values of wetlands in carrying out its activities (E.O. 11990, reference (1)). The development of mitigation "banks" is encouraged as sound conservation planning.

4.2.11. Adverse impacts on floodplains shall be avoided when possible. The direct or indirect support of floodplain development shall be avoided where there is a practicable alternative (E.O. 11988, reference (s)).

4.2.12. Consistent with ecosystem-based management, altered or degraded landscapes and associated habitats shall be restored and rehabilitated whenever practical.

4.2.13. All DoD Components shall develop and promulgate criteria and procedures for assessing natural resource damage claims in the event natural resources under DoD control are damaged by oil or a hazardous substance released by another party. The funds recovered by the Department of Defense as a result of natural resources damage claims shall be used for restoration, replacement, or acquisition of equivalent natural resources (33 U.S.C. 2701 et seq., reference (t)) on the installation where the damages occurred.

4.2.14. Fire is an integral element of natural processes. All DoD Components shall manage fire in a manner to preserve health and safety, protect facilities, and facilitate the health and maintenance of natural systems.

#### 4.3. Cultural Resources Management

4.3.1. Cultural resources under the control of the Department of Defense shall be identified, protected, curated, and interpreted through a comprehensive program that complies with legally-mandated requirements and results in sound and responsible cultural resources stewardship.

4.3.2. DoD installations shall develop a program to preserve the historic character and function of military properties in a cost-effective manner that supports the military mission and protects the health and safety of the occupants and employees.

4.3.3. ICRMPs shall be prepared, maintained, and implemented for all lands and waters under DoD control that contain cultural resources. Each plan shall contain information needed to make appropriate decisions about cultural resources management, including that identified in enclosure 7.

4.3.4. All properties, including those from the "Cold War" era, shall be evaluated in a manner fully consistent with military mission requirements and using the appropriate criteria in 36 CFR 800 (reference (e)) to determine eligibility for nomination to the National Register of Historic Places (National Register). Eligible properties shall be used for mission purposes to the maximum extent possible before acquiring, constructing, or leasing other buildings (Section 470 et seq. of 16 U.S.C., reference (h)).

4.3.5. An economic analysis shall be conducted on all National Register-eligible historic properties that are being considered for demolition and replacement (Section 2825 of 10 U.S.C., reference (f)). The economic analysis should include an evaluation of life-cycle maintenance costs, utility costs, replacement costs, and other pertinent factors.

4.3.6. Native American human remains and cultural items shall be managed and repatriated to culturally-affiliated or lineally-descended Native American organizations in accordance with 25 U.S.C. 3001 and 43 CFR 10 (references (u) and (v)).

4.3.7. Consultations with Federally-recognized tribal governments and other Native American organizations shall be carried out in accordance with Sections 1996 and 4341 of 42 U.S.C., 36 CFR 800, 25 U.S.C. 3001, 43 CFR 10, 32 CFR 22, and Section 470 aa-11 of 16 U.S.C. (references (d), (e), (u), (v), (w), and (h)), and shall follow the principles established in enclosure 8.

#### 5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Acquisition and Technology, through the Deputy Under Secretary of Defense for Environmental Security, shall:

5.1.1. Establish additional conservation policy and guidance, where necessary, in accordance with DoD Directive 4715.1 (reference (a)).

5.1.2. Designate responsibilities and provide procedures for implementing the DoD conservation program.

5.1.3. Ensure that the conservation ethic is integrated throughout the Department of Defense through education, training, and awareness programs.

5.1.4. Support DoD Component conservation budget requirements.

5.1.5. Monitor implementation of this Instruction, including adherence to finding priorities for conservation (enclosure 4), the use of appropriate measures of merit (enclosure 5), and the periodic review of the DoD Component conservation programs.

5.1.6. Identify opportunities for improved efficiency through increased interagency and DoD Component cooperation, information sharing, technology demonstration and transfer, and public communication.

5.1.7. In coordination with the DoD Components, establish goals and objectives for the DoD conservation program.

5.1.8. Integrate the DoD conservation program with other environmental security programs.

5.1.9. Coordinate with other Federal Agencies on conservation matters of national or regional scope.

5.1.10. Oversee the DoD Conservation Committee. The DoD Conservation Committee shall:

5.1.10.1. Recommend natural and cultural resources policy and program improvements to the ESOH Policy Board.

5.1.10.2. Review, analyze, and make recommendations on conservation issues of common interest to the DoD Components.

5.1.10.3. Review compliance with this Instruction.

5.1.10.4. Coordinate natural and cultural resources management programs among the DoD Components.

5.1.10.5. Coordinate periodic natural and cultural resources training opportunities for DoD employees.

5.1.11. In coordination with the DoD Components, designate

and oversee "DoD Executive Agents" for specific conservation-related issues or areas. Designated "DoD Executive Agents" are in enclosure 2.

5.1.12. In coordination with the DoD Comptroller, establish policy for administration of the DoD Reserve Account established by Section 2665 of 10 U.S.C. (reference (f)) and the forestry funds therein.

5.1.13. Ensure that the demonstration, validation, and certification of critical conservation technologies emerging from the technology base.

5.1.14. Gather information from the DoD Components and prepare a consolidated DoD response for statutory reporting requirements.

5.2. The Secretaries of the Military Departments and the Directors of the Defense Agencies, under OSD Principal Staff Assistants and those that report directly to the Secretary or Deputy Secretary of Defense, shall:

5.2.1. Integrate the DoD conservation program with mission activities, including environmental programs.

5.2.2. Ensure compliance with this Instruction, including compliance by tenant activities. Develop and implement programs to monitor, achieve, and maintain compliance with applicable Federal statutory requirements and State regulations as required by applicable references in enclosure 1.

5.2.3. Plan, program, and budget for conservation requirements necessary to execute conservation programs consistent with DoD guidance and fiscal policies, and within available resources.

5.2.4. Lead in the stewardship of natural and cultural resources under their jurisdiction.

5.2.5. Ensure that internal conservation self-assessments are conducted at least annually and external conservation self-assessments are conducted at least once every 3 years at all appropriate installations. Promptly correct identified "problem areas," using priorities defined in paragraph 6.1.3., below.

5.2.6. Present annual reviews on the status of the DoD Components' conservation programs to the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)) or designated representative.

5.2.7. Advise and consult on conservation issues and policies of general DoD interest through participation with the DoD Executive Agent, the DoD Conservation Committee, the ESOH Policy Board, and the Defense Environmental Security Council.



5.2.8. Ensure that installations prepare, maintain, and implement INRMPs and ICRMPs, and that those plans are fully coordinated with appropriate installation offices responsible for preparing and maintaining training plans and master plans. Ensure that each plan is reviewed, and updated, as appropriate, every 5 years, or earlier, as changing circumstances warrant.

5.2.9. Carry out the responsibilities of "DoD Executive Agents" for specific environmental conservation areas when designated by the DUSD(ES) under paragraph 5.1.11., above. "DoD Executive Agents" shall:

5.2.9.1. Monitor and analyze legislation, regulations, and emerging trends, as appropriate, and coordinate input or responses, where necessary.

5.2.9.2. Identify, participate in, and promote the establishment of regional ecosystem management efforts.

5.2.9.3. Provide analysis and point papers for issues of concern.

5.2.9.4. Recommend policy changes and positions for all of the Department of Defense.

5.2.9.5. Develop technical alerts for the DoD Components on upcoming changes.

5.2.9.6. Support public affairs offices, as necessary.

5.2.9.7. Develop a Charter outlining functions and responsibilities, as necessary.

5.2.9.8. Brief the DoD Conservation Committee, the ESOH Policy Board, or the Defense Environmental Security Council, as required, on the status of the DoD Executive Agent program.

5.2.10. Promptly notify the DUSD(ES) of significant conservation issues.

5.3. The Under Secretary of Defense for Personnel and Readiness shall:

5.3.1. Incorporate conservation values into DoD education, training, construction programs, and performance evaluation policies.

5.3.2. Ensure that sufficient qualified personnel and training are available to carry out the requirements of this Instruction.

5.3.3. Identify opportunities for efficiencies in providing conservation training through increased interagency and DoD Component cooperation.

5.4. The Director, Defense Research and Engineering, under the Under Secretary of Defense for Acquisition and Technology, shall:

5.4.1. Develop an integrated and coordinated science and technology program to address the conservation program requirements identified by the DUSD(ES).

5.4.2. Issue guidance to the DoD Components on conservation science and technology programs.

## 6. PROCEDURES

### 6.1. General Conservation Management

6.1.1. Conservation management is a dynamic process.

A consistent conservation management approach includes those systematic procedures that should be used by each DoD installation or activity, as follows:

6.1.1.1. Assess military mission.

6.1.1.2. Prepare detailed inventory of resources.

6.1.1.3. Analyze and assess risk to the resources.

6.1.1.4. Prepare management plans.

6.1.1.5. Implement management plans.

6.1.1.6. Monitor and assess results.

6.1.1.7. Conduct needs assessment survey.

6.1.1.8. Reassess inventories.

6.1.1.9. Reanalyze and reassess risk to resources.

6.1.1.10. Adjust program, as necessary.

6.1.2. Each DoD Component shall ensure that current and planned installation programs, plans, and projects (e.g., training and test range management plans, master plans, integrated pest management plans, endangered species recovery plans, golf course management plans, grounds maintenance plans, facilities construction site approvals, and other land use activities) are integrated and compatible with natural and cultural resources programs, plans, and projects.

6.1.3. All natural and cultural resources compliance requirements shall be categorized based on the "Environmental Quality Conservation Compliance Classes" defined in enclosure 4. All projects in Classes 0, I, and II shall be funded consistent with timely execution to meet future deadlines. Each DoD Component shall use

Defense Planning Guidance to determine funding priority for the Environmental Quality Conservation Compliance Classes.

6.1.4. Each DoD Component shall ensure that proven and scientific data collection methods and sampling techniques are used to develop and update natural and cultural resources inventories.

6.1.5. Cooperative agreements may be entered into with other Federal Agencies, States, local governments, nongovernmental organizations, and individuals to provide for the maintenance and improvement of natural resources or conservation research on DoD installations. Agreements authorized by 10 U.S.C. 1588(a)(2) (reference (f)) are not subject to 31 U.S.C. 6301 (reference (g)), but must comply with the procedural requirements of DoD 3210.6-R (reference (n)). Those agreements may be used; e.g., for inventories, monitoring, research, minor construction and maintenance, public awareness, and other work that supports the DoD conservation program. All such agreements must contain language that state the DoD Component shall carry out its obligations under the agreement to the extent that funding is available.

6.1.6. INRMPs and ICRMPs shall be developed with the active involvement of installation and higher command personnel, in coordination with relevant outside authorities and partners (DoD Directive 4165.61, reference (x)), and with their users. They shall be reviewed annually, updated as mission or environmental changes warrant, and revised and approved by appropriate command levels at least every 5 years. The DoD Components shall ensure that consultation, agreements, concurrence, and approvals required by law are carried out.

6.1.7. The DoD Conservation Committee shall be chaired by the Director, Conservation, or other designated "representative of the DUSD(ES)." Each Military Department, each Military Service, the Defense Logistics Agency, and the "representative of the DUSD(ES)" shall have one vote. "Primary voting members" and "alternates to the DoD Conservation Committee" shall be designated in writing. Each Military Department shall designate up to 4 individuals eligible to vote.

The Armed Forces Pest Management Board and the Office of General Counsel shall each have one "nonvoting member to the DoD Conservation Committee." Other DoD offices shall attend at the invitation of the Chair of the DoD Conservation Committee, after seeking concurrence from the appropriate DoD Component. Ad hoc subcommittees may be established, as needed.

6.1.8. A planning level survey, as follows, is an essential initial step in managing an installation's natural and cultural resources:

6.1.8.1. The biological inventory should include, at

a minimum, soils, vegetative communities, critical species (e.g., threatened and endangered, locally rare, keystone), and delineation of wetlands and water sources.

6.1.8.2. The cultural resources inventory of historic buildings should include, at a minimum, the identification and preliminary assessment of all National Register-eligible historic buildings and structures. Objects, districts, and landscapes covered by Section 470 et seq. of 16 U.S.C., (reference (h)) should also be included.

6.1.8.3. The cultural resources inventory of archeological resources should include, at a minimum, the analysis, identification, and prioritization of all potential archeological locations on the installation and verification of the presence or absence of archeological resources in all areas that might be adversely impacted by military activities.

6.1.9. Partnerships and interagency agreements can be useful for meeting DoD conservation goals. Each partnering or cooperating agreement in which DoD formally participates should recognize that:

6.1.9.1. The primary DoD mission is the protection of national security. DoD activities on military lands are vital to fulfillment of that mission.

6.1.9.2. Actions specified in those agreements should not detract from the military mission.

6.1.9.3. Military lands cannot be used for the mitigation of impacts of actions occurring off the installation that affect the environment.

6.1.9.4. Military lands cannot be set aside as permanent environmental preserves. The Department of Defense must maintain the flexibility to adapt our defense mission to political and technological developments.

6.1.9.5. The Department of Defense cannot commit funding before the Congress makes it available.

6.1.10. Portions of installation real property that have significant ecological, cultural, scenic, recreational, or educational value may be set aside for conservation of those resources, where such conservation is consistent with the military mission. Such areas shall be reassessed if the military needs of the installation change, during any base realignment or closure action involving the property, or if the property becomes excess and requires disposal.

6.1.11. When an installation determines that the disclosure of information on the location or character of natural or cultural resources may create a substantial risk of harm, theft, or destruction of such resources, invasion

of privacy, trespass on Government property, interference with the military mission, and/or interference with the rights guaranteed to Native American groups under 42 U.S.C. 1996 (reference (d)), the installation shall ensure that documents and other data provided to the public do not disclose such information. That information may be provided to other Agencies and other parties in accordance with DoD Component policies and procedures.

6.1.12. Before disposing of DoD properties, the DoD Component with responsibility for the property involved shall:

6.1.12.1. Identify all significant natural and cultural resources, and determine whether they may be affected by the disposal action.

6.1.12.2. Provide disposal plans to appropriate Agencies, organizations, and individuals, and provide a reasonable opportunity for review and comment before proceeding with the disposal action.

6.1.12.3. Ensure that "museum objects and documents" are identified and preserved.

6.1.12.4. Dispose of the property in accordance with any other legal requirements.

## 6.2. Natural Resources Management

6.2.1. Ecosystem management shall do the following:

6.2.1.1. Include a shift from single species to multiple species management, insofar as that is consistent with the requirements of Section 1531 et seq. of 42 U.S.C. (reference (d));

6.2.1.2. Consider the formation of partnerships necessary to assess and manage ecosystems that cross political boundaries;

6.2.1.3. Use the best available scientific information in decision-making and adaptive management techniques in natural resource management;

6.2.1.4. Include associated cultural values.

6.2.1.5. Use principles and guidelines defined in enclosure 6 for all DoD lands and waters.

6.2.2. Biodiversity conservation on DoD lands and waters shall be promoted when consistent with the mission and practicable to achieve the following goals:

6.2.2.1. Maintain or restore remaining native ecosystem types across their natural range of variation.

6.2.2.2. Maintain or reestablish viable populations of all native species in an installation's areas of natural habitat, when practical.

6.2.2.3. Maintain evolutionary and ecological processes, such as disturbance regimes, hydrological processes, and nutrient cycles.

6.2.2.4. Manage over sufficiently long-time periods for changing system dynamics.

6.2.2.5. Accommodate human use in those guidelines.

6.2.3. Ecosystem management and biodiversity conservation are closely interrelated. Key elements of that relationship are as follows:

6.2.3.1. Integrate ecosystem management with mission readiness in the context of a shrinking DoD land base and budget.

6.2.3.2. Perform operational, testing, training, and maintenance activities in concert with natural resources conservation.

6.2.3.3. Integrate ecosystem conservation considerations into marine and oceangoing operations plans.

6.2.3.4. Biodiversity conservation contributes to overall ecosystem integrity and sustainability, which in turn supports the military mission.

6.2.3.5. Ecosystem management and responsibilities under existing environmental protection and natural resources management authorities and directives are related.

6.2.3.6. A full and evolving array of ecosystem management tools as options shall be considered and retained.

6.2.3.7. Regional approaches incorporating cooperation with other DoD Components, other Federal Agencies, and with adjoining property uses should be encouraged.

That cooperation can result in significant conservation, public relations, and compliance benefits for DoD installations.

6.2.4. Agricultural and forest products shall not be given away, abandoned, carelessly destroyed, used to offset contract costs or traded for services, supplies, or products, or otherwise be improperly removed. Forest products may be harvested to generate electricity, heat, steam, or for other uses only if the Military Services' forestry account is paid fair market value. Planned forest product sales shall continue on land reported as excess until actual closure, disposal, or transfer occurs. That portion of the proceeds from sales of land that is attributable to the value of standing timber

on the land sold shall be deposited in the Military Service's forestry account. Agricultural proceeds shall be used exclusively to fund natural resources management program requirements and the administrative expenses of agricultural and grazing leases (Section 2667(d) of 10 U.S.C., reference (f)). Authorized uses of cropland and grazing funds are personnel salaries (limited to professional and technical support of the grazing and cropland programs in support of management goals and objectives); development of INRMPs; administrative expenses (training, scientific meetings, parts, supplies); and improvements to the land to include increased productivity, reduced soil erosion, and fencing.

6.2.5. Areas on DoD installations that contain natural resources that warrant special conservation efforts, after appropriate study and coordination, may be designated as special natural areas. The integrated natural resources management plan for the installation shall address special management provisions necessary for the protection of each area. Special natural areas include botanical areas, ecological reserve areas, geological areas, natural resources areas, riparian areas, scenic areas, zoological areas, "watchable wildlife" areas, and traditional cultural places having officially recognized special qualities or attributes.

6.2.6. Procedures shall be established to ensure that no Federal funds are expended in the undeveloped and unprotected coastal barriers of the Coastal Barrier Resource System unless those expenditures are for military activities essential to national security. If such expenditures are necessary, the actions shall be coordinated with the Department of the Interior (Section 3501 et seq. of 16 U.S.C., reference (h)).

### 6.3. Cultural Resources Management

6.3.1. Routine DoD management of historic buildings, districts, sites, ships, aircraft, objects, and structures, and other cultural resources should include sound and cost-effective preservation techniques.

6.3.2. At the earliest planning stage of any undertaking that might affect a cultural resource, the affected DoD Component shall start interagency consultation procedures to explain the undertaking, its area of potential effect, and a preliminary determination on whether or not the resources will be affected. Consultation shall be undertaken, as appropriate, with the Advisory Council on Historic Preservation, the State Historic Preservation Office, Federally-recognized Indian tribes and other Native American organizations and other interested organizations and individuals as provided in 42 U.S.C. 1996, 36 CFR 800, 25 U.S.C. 3001, and Section 470 aa-11 of 16 U.S.C. (references (d), (e), (u) and (h)).

6.3.3. If the economic analysis described in paragraph 4.3.5., above, demonstrates that revitalization cost of historic properties exceeds 70 percent of replacement cost, replacement construction may be used. However, the 70 percent value may be exceeded where the significance of a particular historic structure warrants special attention, or if warranted by long-term life-cycle cost comparisons. An assessment of new construction must evaluate life-cycle maintenance cost and replacement cost as alternatives for consideration by the decisionmaker.

Replacement cost shall not be based on replacement in kind, but shall be based on a design that is architecturally compatible with the historic property. Federal Agencies are required to make maximum reuse of historic buildings before disposal, new construction, or leasing (Section 470 et seq. of 16 U.S.C., reference (h)). If the building to be disposed of is historic, potential reuses of the building must be analyzed prior to making a decision to dispose of it.

6.3.4. Consultation with Federally-recognized Indian tribes or other Native American organizations is required by law when some human remains or cultural items, as defined in 25 U.S.C. 3001 (reference (u)), or when a site of religious or cultural importance are found on DoD property. If such items are unearthed, the requirements of reference (u) must be met. The installation should consult with the tribe(s), to the extent possible early in the planning process, and should take into account the interests of the potentially affected tribe(s) when carrying out the action.

## 7. EFFECTIVE DATE

This Instruction is effective immediately.

Enclosures - 8

E1. References, continued

E2. DoD Executive Agents for Conservation Issues

E3. Definitions

E4. Programming and Budgeting Priorities for Conservation Program

E5. Conservation Measures of Merit

E6. Ecosystem Management Principles and Guidelines

E7. Contents of INRMPS and ICRMPs

E8. Principles for Consultations with Native American

E1. ENCLOSURE 1



REFERENCES, continued

- (e) Title 36, Code of Federal Regulations, Parts 60, 78, 79, 800 and 1228, "National Register of Historic Places," current edition
- (f) Sections 1588(a)(2), 2665, 2667(d) and 2825 of title 10, United States Code
- (g) Sections 6301-6308 of title 31, United States Code
- (h) Sections 431-433, 470 et seq., 670 et seq., 1361-1407 1431 et seq., 1531 et seq. and 3501 et seq. of title 16, United States Code
- (i) Section 328 of National Defense Authorization Report 103-701
- (j) Section 2852 of National Defense Authorization Report 103-499
- (k) Title 40, Code of Federal Regulations, Parts 1500-1508, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" current edition
- (l) Executive Order 11990, "Protection of Wetlands," May 24, 1977
- (m) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994
- (n) DoD 3210.6-R, "DoD Grant and Cooperative Agreement Regulations," March 1995, authorized by DoD Directive 3210.6, April 4, 1991
- (o) DoD Instruction 7310.5, "Accounting for Production and Sale of Forest Products," January 25, 1988
- (p) Section 1251 et seq. of title 32, United States Code
- (q) Presidential Memorandum, "Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds," April 26, 1994
- (r) Federal Register, Volume 60, page 40837, August 10, 1995
- (s) Executive Order 11988, "Floodplain Management," May 24, 1977, as amended
- (t) Section 2701 et seq. of title 33, United States Code
- (u) Section 3001 of title 25, United States Code

(v) Title 43, Code of Federal Regulations, Part 10, "Native American Graves Protection and Repatriation Act Regulation," December 4, 1995

(w) Title 32, Code of Federal Regulations, Parts 22 and 229, "Archeological Resources Protection Act of 1979; Uniform Regulations."

(x) DoD Directive 4165.61, "Intergovernmental Coordination of DoD Federal Development Programs and Activities," August 9, 1983

(y) Presidential Memorandum, "Government-to-Government Relations with Native American Tribal Governments," April 29, 1994

(z) DoD Directive 4100.15, "Commercial Activities Program," March 10, 1989

(aa) Federal Register, Volume 53, page 4742, February 17, 1988

(bb) Federal Register, Volume 48, page 44716, September 29, 1983

(cc) Executive Order 12962, "Recreational Fisheries," June 7, 1995

(dd) Executive Order 11644, "Use of Off-Road Vehicles on the Public Lands," February 8, 1972

(ee) Executive Order 11989, "Off-Road Vehicles on Public Lands," May 24, 1977

(ff) Executive Order 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971

(gg) DoD Instruction 4715.9, "Environmental Planning and Analysis," May 3, 1996

E2. ENCLOSURE 2

DoD EXECUTIVE AGENTS FOR CONSERVATION ISSUES

E2.1. NAVY.

The DoD Executive Agent for the Chesapeake Bay Program.

E2.2. NAVY.

The DoD Executive Agent for the Gulf of Mexico Program.

E2.3. ARMY.

The DoD Executive Agent for the Mojave Desert Ecosystem Initiative.

E2.4. NAVY.

The DoD Executive Agent for the Partners In Flight Initiative.

E2.5. AIR FORCE.

The DoD Executive Agent for the Biodiversity Initiative.

E2.6. NAVY.

The DoD Executive Agent for the Coastal America Initiative.

E2.7. AIR FORCE.

The DoD Executive Agent for the Cold War Initiative.

E2.8. ARMY.

The DoD Executive Agent for the DoD Forestry Reserve Account Program.

E3. ENCLOSURE 3

DEFINITIONS

E3.1.1. Best Management Practices. Resource management decisions that are based on the latest professional and technical standards for the protection, enhancement, and rehabilitation of natural and cultural resources.

E3.1.2. Biodiversity. The variety of life forms and processes and the environment in which they occur.

Biodiversity includes the number and variety of living organisms, the genetic differences among them, the communities and ecosystems in which they occur, and the ecological and evolutionary processes that keep them functioning, yet ever changing and adapting.

E3.1.3. Candidate Species. Any species, plant or animal, which is being considered for listing as threatened or endangered by the U.S. Department of the Interior.

E3.1.4. Conservation. Planned management, use, and protection of natural and cultural resources to provide sustainable use and continued benefit for present and future generations, and the prevention of exploitation, destruction, waste, and/or neglect.

E3.1.5. Conservation Self-assessment. A multimedia inspection or evaluation of an installation's natural and cultural resources program. EXTERNAL CONSERVATION SELF-ASSESSMENTS are conducted by designated DoD representatives from outside the installation being inspected. INTERNAL CONSERVATION SELF-ASSESSMENTS are usually conducted by installation personnel.

E3.1.6. "Cold War" Historic Resources. Buildings,

structures, sites, objects, and districts built, used or associated with critical events or persons during the "Cold War" period (1945-1989) and that possess exceptional historic importance to the nation or that are outstanding examples of technological or scientific achievement.

E3.1.7. Cultural Resources. Buildings, structures, sites, districts, and objects eligible for or included in the National Register of Historic Places; "cultural items" as defined in 25 U.S.C. 3001 (reference (u)); American Indian, Eskimo, Aleut, or Native Hawaiian sacred sites for which access is protected under 42 U.S.C. 1996 (reference (d)); "archeological resources" as defined by Section 470 aa-11 of 16 U.S.C. (reference (h)); and "archeological artifact collections and associated records" defined under 36 CFR 79 (reference (e)).

E3.1.8. Ecosystem. A dynamic and natural complex of living organisms interacting with each other and with their associated nonliving environment.

E3.1.9. Ecosystem Management. A goal-driven approach to managing natural and cultural resources that supports present and future mission requirements; preserves ecosystem integrity; is at a scale compatible with natural processes; is cognizant of nature's timeframes; recognizes social and economic viability within functioning ecosystems; is adaptable to complex and changing requirements; and is realized through effective partnerships among private, local, State, tribal, and Federal interests. Ecosystem management is a process that considers the environment as a complex system functioning as a whole, not as a collection of parts, and recognizes that people and their social and economic needs are a part of the whole.

E3.1.10. Exotic Species. Species that occur in a given place, area, or region as the result of direct or indirect, deliberate or accidental introduction of the species by human activity.

E3.1.11. Integrated Cultural Resources Management Plan. A plan that defines the process for the management of cultural resources on DoD installations.

E3.1.12. Integrated Natural Resources Management Plan. An integrated plan based, to the maximum extent practicable, on ecosystem management that shows the interrelationships of individual components of natural resources management (e.g., fish and wildlife, forestry, land management, and outdoor recreation) to mission requirements and other land use activities affecting an installation's natural resources.

E3.1.13. Mitigation. Lessening the adverse effects an undertaking may cause relative to natural or cultural resources. Mitigation can include limiting the magnitude of the action; repairing, rehabilitating, or restoring

the affected resource; avoiding the effect altogether; reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action; and/or compensating for the effect by providing substitute resources or environments.

E3.1.14. Mitigation Banking. Actions taken to compensate for future adverse effects of undertakings by providing substitute resources or environments in advance of any specific undertaking.

E3.1.15. Multiple Use. The integrated, coordinated, and compatible use of natural resources so as to achieve a sustainable yield of a mix of desired goods, services, and direct and indirect benefits while protecting the primary purpose of supporting and enhancing the military mission and observing stewardship responsibilities.

E3.1.16. Operational Carrying Capacity. The amount of military operations a given area can support without causing permanent environmental damage.

E3.1.17. National Register of Historic Places. The official Federal list of sites, districts, buildings, structures, and objects worthy of preservation consideration because of significance in American history, architecture, archeology, engineering, or culture. Significance may be local, State, or national in scope. National Register eligibility criteria are published in 36 CFR 60 (reference (e)).

E3.1.18. National Register Resource and/or Historic Property. Any resource that meets eligibility criteria for the National Register of Historic Places, whether or not it has been formally registered, identified or acknowledged as "eligible." "Historic property" is used synonymously with "National Register resource."

E3.1.19. Native Americans. American Indians, Eskimos, Aleuts, and Native Hawaiians.

E3.1.20. Natural Resources. All elements of nature and their environments of soil, air, and water. Those consist of two general types, as follows:

E3.1.20.1. Earth Resources. Nonliving resources such as minerals and soil components.

E3.1.20.2. Biological Resources. Living resources such as plants and animals.

E3.1.21. Needs Assessment Survey. An inventory of an installation's inventories, management plans, personnel, training, supplies, equipment, and other management tools to identify future actions and resources needed for the installation to comply with the requirements of this Instruction.

E3.1.22. Planning Level Survey and/or Inventory of Biological, Cultural, or Earth Resources. An inventory of "sensitive and significant resources" that must be identified to integrate legal and stewardship requirements with military requirements so that defense preparedness is maintained.

E3.1.23. Sensitive Resources. "Resources" identified as "highly responsive or susceptible to modification by external agents or influences."

E3.1.24. Significant Resources. "Resources" identified as "having special importance," or as "having or likely to have more influence on a particular aspect of the environment than other components."

E3.1.25. Stewardship. The management of resources entrusted to one's care in a way that preserves and enhances the resources and their benefits for present and future generations.

E3.1.26. Sustainable Yield. Managing a renewable natural resource to provide an annual or periodic yield of goods, services, and direct and indirect benefits, into perpetuity. That may include, but is not limited to, maintaining economic benefits, ecological processes and functions, and biodiversity.

E3.1.27. Tribe. A Federally-recognized tribe or other Federally-recognized Native American group or organization.

E3.1.28. Undertaking. Any Federal, Federally-assisted, or Federally-licensed action, activity, or program, new or continuing, that may have an effect on National Register resources and thereby triggers procedural responsibilities under Section 470 et seq. of 16 U.S.C. (reference (h)).

E3.1.29. Wetlands. Lands where saturation is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. Common terms used to describe various wetlands include "marshes," "bogs," "swamps," "small ponds," "sloughs," "potholes," "vernal pools," and "wet meadows."

#### E4. ENCLOSURE 4

##### PROGRAMMING AND BUDGETING PRIORITIES

##### FOR CONSERVATION PROGRAMS

#### E4.1. CLASS 0: RECURRING NATURAL AND CULTURAL RESOURCES CONSERVATION MANAGEMENT REQUIREMENTS.

Includes activities needed to cover the recurring administrative,

personnel, and other costs associated with managing DoD's conservation program that are necessary to meet applicable compliance requirements (Federal and State laws, regulations, Presidential Executive orders, and DoD policies) or that are in direct support of the military mission. Also included are environmental management activities associated with the operation of facilities, installations, and deployed weapons systems. Recurring costs consist of manpower, training, supplies, hazardous waste disposal, operating recycling activities, permits, fees, testing and monitoring and/or sampling and analysis, reporting and recordkeeping, maintenance of environmental conservation equipment, and compliance self-assessments.

#### E4.2. CLASS I: CURRENT COMPLIANCE.

Includes projects and activities needed because an installation is currently out of compliance (has received an enforcement action from a duly authorized Federal or State agency, or local authority); has a signed compliance agreement or has received a consent order; has not met requirements based on applicable Federal or State laws, regulations, standards, Presidential Executive orders, or DoD policies, including those listed in enclosure 2; and/or are immediate and essential to maintain operational integrity or sustain readiness of the military mission. "Class I" also includes projects and activities needed that are not currently out of compliance (deadlines or requirements have been established by applicable laws, regulations, standards, DoD policies, or Presidential Executive orders, but deadlines have not passed or requirements are not in force) but shall be if projects or activities are not implemented in the current program year. Those activities include the following:

E4.2.1. Environmental analyses for natural and cultural resource conservation projects, and monitoring and studies required to assess and mitigate potential impacts of the military mission on conservation resources.

E4.2.2. Planning (e.g., 42 U.S.C. 4341 (reference (d)) documentation, master plans, and integrated natural and cultural resource management plans, etc.).

E4.2.3. Baseline inventories of natural and cultural resources.

E4.2.4. Biological assessments, surveys, or habitat protection for a specific listed species, critical for the protection of the species so that proposed or continuing actions can be modified in consultation with the U.S. Fish and Wildlife Service or the U.S. National Marine and Fisheries Service to prevent "taking" of the species.

E4.2.5. Inventories and surveys of historical and archeological sites critical for the protection of cultural resources so that continuing actions can be modified in consultation

with the Advisory Council for Historic Preservation.

E4.2.6. Mitigation to meet existing regulatory permit conditions or written agreements, such as those required under Section 4341 of 42 U.S.C., Sections 1361-1407, 703, and 470 et seq. of 16 U.S.C., and Section 1251 et seq. of 32 U.S.C., and (references (d), (h), and (p))), and included in documents required by Section 4341 of 42 U.S.C. (reference (d)).

E4.2.7. Nonpoint source pollution or watershed management studies or actions needed to meet compliance dates cited in approved State coastal nonpoint source pollution control plans, as required to meet consistency determinations under Sections 1451 et seq. and 703 et seq. of 16 U.S.C. (reference (h)).

E4.2.8. Wetlands delineation, following existing statutory requirements, critical for the prevention of adverse impacts to wetlands without a permit so that continuing actions can be modified to ensure mission continuity, as required by 32 U.S.C. 1251 et seq. (reference (p)).

E4.2.9. Efforts to achieve compliance with requirements that have deadlines that have already passed, as cited in DoD executed agreements, such as support for the Chesapeake Bay Agreement Action Plan and the DoD Mojave Desert Ecosystem Management Initiative.

E4.2.10. Initial curation of archeological materials, as required under 32 CFR 22 and 229, Section 470 aa-11 of 16 U.S.C, and 36 CFR 78 and 79, and (references (w), (h), and (e)).

E4.2.11. Consultations with Native American groups, if reinterment of Native American remains under 25 U.S.C. 3001 (reference (u)) is part of their wishes.

#### E4.3. CLASS II: MAINTENANCE REQUIREMENTS.

Includes those projects and activities needed that are not currently out of compliance (deadlines or requirements have been established by applicable laws, regulations, standards, Presidential Executive orders, or DoD policies) but deadlines have not passed or requirements are not in force), but shall be out of compliance if projects or activities are not implemented in time to meet an established deadline beyond the current program year.

Examples include the following:

E4.3.1. Compliance with future requirements that have deadlines.

E4.3.2. Conservation and Geographic Information System mapping in order to be in compliance with Federal, State and local regulations, Presidential Executive orders, and DoD policy.



E4.3.3. Efforts undertaken in accordance with non-deadline specific compliance requirements of leadership initiatives, such as Coastal America, the "Chesapeake Bay Agreement Action Plan," and "Mojave Desert Ecosystem Management Initiative."

E4.3.4. Wetlands enhancement, in order to achieve the President's order for "no net loss" or to achieve enhancement of existing degraded wetlands, as required under E.O. 11990 (reference (l)) and 32 U.S.C. 1251 et seq. (reference (p)).

E4.3.5. Public education programs that educate the public on the importance of protecting archeological resources as required by Section 470 aa-11 of 16 U.S.C. (reference (h)).

#### E4.4. CLASS III: ENHANCEMENT ACTIONS, BEYOND COMPLIANCE

Includes those projects and activities that enhance conservation resources or the integrity of the installation mission, or are needed to address overall environmental goals and objectives, but are not specifically required under regulation or Executive order and are not of an immediate nature. Examples include the following:

E4.4.1. Community outreach activities, such as "Earth Day" and "Historic Preservation Week" activities.

E4.4.2. Educational and public awareness projects, such as interpretive displays, oral histories, "watchable wildlife" areas, nature trails, wildlife checklists, and conservation teaching materials.

E4.4.3. Biological assessments, surveys, or habitat protection for a candidate species for listing as "endangered or threatened."

E4.4.4. Restoration or enhancement of cultural or natural resources when no specific compliance requirement dictates a course or timing of action.

E4.4.5. Reinterment of Native American remains on land managed or controlled by the Department of Defense.

E4.4.6. Management and execution of volunteer and partnership programs.

#### E5. ENCLOSURE 5

##### CONSERVATION MEASURES OF MERIT

##### E5.1. PREPARATION OF INRMPs (NUMBER OF INSTALLATIONS)

E5.1.1. Requiring integrated plans.

E5.1.2. With up-to-date, approved plans.

E5.1.3. Where an existing plan needs to be updated.

E5.1.4. Where a plan is appropriate or needed, but does not exist.

E5.1.5. Where a plan is not appropriate.

E5.2. PREPARATION OF ICRMPs (NUMBER OF INSTALLATIONS)

E5.2.1. Requiring plans.

E5.2.2. With up-to-date, approved plans.

E5.2.3. Where an existing plan needs to be updated.

E5.2.4. Where a plan is needed but does not exist.

E5.2.5. Where a plan is not needed.

E5.3. COMPLETION OF PLANNING LEVEL SURVEY AND INVENTORY OF BIOLOGICAL RESOURCES (NUMBER OF INSTALLATIONS)

E5.3.1. With completed inventories.

E5.3.2. With partial inventories.

E5.3.3. Without inventories, but needed.

E5.3.4. Inventories not needed.

E5.4. COMPLETION OF WETLAND INVENTORIES (NUMBER OF INSTALLATIONS)

E5.4.1. With completed inventories.

E5.4.2. With partial inventories.

E5.4.3. Without inventories, but needed.

E5.4.4. Inventories not needed.

E5.5. COMPLETION OF PLANNING LEVEL SURVEY AND INVENTORY OF CULTURAL RESOURCES (NUMBER OF INSTALLATIONS)

E5.5.1. With completed historic building inventories.

E5.5.2. With partial historic building inventories.

E5.5.3. Without historic building inventories, but needed.

E5.5.4. Historic building inventories not needed.

E5.5.5. With completed archeological inventories.

E5.5.6. With partial archeological inventories.

E5.5.7. Without archeological inventories, but needed.

E5.5.8. Archeological inventories not needed.

E5.6. ARCHEOLOGICAL RESOURCES COMPLIANCE (NUMBER OF INSTALLATIONS)

E5.6.1. With archeological collections.

E5.6.2. With collections curated in accordance with reference (x).

E5.6.3. Where professional curation actions are needed.

E5.6.4. With known archeological sites.

E5.6.5. With site protection procedures in effect.

E5.6.6. Where site protection procedures are needed.

E6. ENCLOSURE 6

ECOSYSTEM MANAGEMENT PRINCIPLES AND GUIDELINES

E6.1. GOAL OF ECOSYSTEM MANAGEMENT

To ensure that military lands support present and future training and testing requirements while preserving, improving, and enhancing ecosystem integrity. Over the long term, that approach shall maintain and improve the sustainability and biological diversity of terrestrial and aquatic (including marine) ecosystems while supporting sustainable economies, human use, and the environment required for realistic military training operations.

E6.2. PRINCIPLES AND GUIDELINES

E6.2.1. Maintain and Improve the Sustainability and Native Biodiversity of Ecosystems. Ecosystem management involves conducting installation programs and activities in a manner that identifies, maintains, and restores the "composition, structure, and function of natural communities that comprise ecosystems," to ensure their sustainability and conservation of biodiversity at landscape and other relevant ecological scales to the maximum extent that mission needs allow.

E6.2.2. Administer with Consideration of Ecological Units and Timeframes. Ecosystem management requires consideration of the effects of installation programs and actions at spatial and temporal ecological scales that are relevant to natural processes. A larger geographic

view and more appropriate ecological time frames assist in the analysis of cumulative effects on ecosystems that may not be apparent with smaller and shorter scales.

Regional ecosystem management efforts are generally more appropriate than either national or installation-specific efforts. Consideration of sustainability under long-term environmental threats, such as climate change, is also important.

E6.2.3. Support Sustainable Human Activities. People and their social, economic, and national security needs are an integral part of ecological systems, and management of ecosystems depends on sensitivity to those issues.

Consistent with mission requirements, actions should support multiple use (e.g., outdoor recreation, hunting, fishing, forest timber products, and agricultural outleasing) and sustainable development by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

E6.2.4. Develop a Vision of Ecosystem Health. All interested parties (Federal, State, tribal, and local governments, nongovernmental organizations, private organizations, and the public) should collaborate in developing a shared vision of what constitutes desirable future ecosystem conditions for the region of concern.

Existing social and economic conditions should be factored into the vision, as well as methods by which all parties may contribute to the achievement of desirable ecosystem goals.

E6.2.5. Develop Priorities and Reconcile Conflicts.

Successful approaches should include mechanisms for establishing priorities among the objectives and for conflict resolution during both the selection of the ecosystem management objectives and the methods for meeting those objectives. Identifying "local installation objectives" and "urban development trends" are especially important to determine compatibility with ecosystem objectives. Regional workshops should be convened periodically to ensure that efforts are focused and coordinated.

E6.2.6. Develop Coordinated Approaches to Work Toward Ecosystem Health. Ecosystems rarely coincide with ownership and political boundaries so cooperation across ownerships is an important component of ecosystem management.

To develop the collaborative approach necessary for successful ecosystem management, installations should:

E6.2.6.1. Involve the military operational community early in the planning process. Work with military trainers and others to find ways to accomplish the military mission in a manner consistent with ecosystem management.

E6.2.6.2. Develop a detailed ecosystem management implementation strategy for installation lands and other programs based

on the vision developed in subsection E6.2.4., above, and those principles and guidelines;

E6.2.6.3. Meet regularly with regional stakeholders (e.g., State, tribal, and local governments; nongovernmental entities; private landowners; and the public) to discuss issues and to work towards common goals.

E6.2.6.4. Incorporate ecosystem management goals into strategic, financial, and program planning and design budgets to meet the goals and objectives of the ecosystem management implementation strategy.

E6.2.6.5. Seek to prevent undesirable duplication of effort, minimize inconsistencies, and create efficiencies in programs affecting ecosystems.

E6.2.7. Rely on the Best Science and Data Available.

Ecosystem management is based on scientific understanding of ecosystem composition, structure, and function.

It requires more and better research and data collection, as well as better coordination and use of existing data and technologies. Information should be accessible, consistent, and commensurable. Standards should be established for the collection, taxonomy, distribution, exchange, update, and format of ecological, socioeconomic, cartographic, and managerial data.

E6.2.8. Use Benchmarks to Monitor and Evaluate Outcomes.

Accountability measurements are vital to effective ecosystem management. Implementation strategies should include specific and measurable objectives and criteria with which to evaluate activities in the ecosystem.

Efficiencies gained through cooperation and streamlining should be included in those objectives.

E6.2.9. Use Adaptive Management. Ecosystems are recognized as open, changing, and complex systems.

Management practices should be flexible to accommodate the evolution of scientific understanding of ecosystems.

Based on periodic reviews of implementation, adjustments to the standards and guidelines applicable to management activities affecting the ecosystem should be made.

E6.2.10. Implement Through Installation Plans and Programs.

An ecosystem's desirable range of future conditions should be achieved through linkages with other stakeholders.

"Specific DoD activities" should be identified, as appropriate, in installation INRMPs and ICRMPs and in other planning and budgeting documents.

E7. ENCLOSURE 7

CONTENTS OF INRMPs AND ICRMPs

E7.1. GENERAL CONTENTS

An INRMP or ICRMP shall do the following:

E7.1.1. Include a summary of general information about the installation's mission and history, as well as specific management information necessary for managing the installation's natural or cultural resources.

E7.1.2. Provide natural or cultural resources context information about the installation's mission and history.

E7.1.3. Identify all legal requirements pertinent to natural or cultural resources management.

E7.1.4. Identify the installation's natural or cultural resources.

E7.1.5. Recommend procedures for managing the installation's natural or cultural resources in a manner that is compatible with the installation mission, satisfies legal requirements, and is consistent with ecosystem management principles and guidelines.

E7.1.6. Establish priorities for natural or cultural resources management that ensure compliance with legal requirements and ongoing stewardship responsibilities.

E7.1.7. Provide management procedures for the ongoing identification, maintenance, and enhancement of natural or cultural resources.

E7.1.8. Promote the use of natural or cultural resources in ways that are beneficial to the military mission, the resources, and other public interests.

E7.1.9. Be thoroughly integrated with other installation plans, including the INRMP, the ICRMP, the installation master plan, the facilities maintenance plan, training and range area management plans, mobilization and deployment plans, and information management systems.

E7.1.10. Establish requirements, goals, and targets that can be easily reflected in budget documents and decisionmaking processes, and addressed in conservation self-assessments.

E7.1.11. Address natural and cultural resources, ecosystems, and areas of critical or special concern from both technical and policy standpoints.

## E7.2. SPECIFIC CONTENTS OF AN INRMP

An INRMP shall include, as appropriate:

E7.2.1. A summary of known natural resources information.

E7.2.2. Analysis of the sufficiency of the existing information on natural resources and associated contexts

to meet compliance requirements.

E7.2.3. Information on areas that have not been inventoried and a plan for completion of the inventory.

E7.2.4. Identification and prioritization of actions required to implement goals and objectives of the plan.

E7.2.5. Identification of the type and location of actions that may affect natural resources.

E7.2.6. Procedures to ensure that actions of the installation and its tenants are planned and carried out in ways that protect and enhance its natural resources.

E7.2.7. Identification of unique natural resource issues confronting the installation.

E7.2.8. Conservation and mitigation strategies for threatened natural resources.

E7.2.9. Coordination processes between the installation, regulatory agencies and the public that help to ensure proper management of an installation's natural resources.

E7.2.10. Provisions for sharing appropriate natural resources information with Federal and State agencies, nongovernmental organizations, researchers, and the general public.

E7.2.11. Standard operating procedures for routine occurrences and where blanket statements can coordinate a process, such as inventories, repetitive ecosystem maintenance and enhancement, and spill responses where natural resources are involved and tailored for the particular conditions at the installation.

E7.2.12. Procedures for consultation with all interested groups and individuals that represent an interest in natural resources.

E7.2.13. Provisions for enforcement of natural resource laws and regulations by professionally trained personnel.

E7.2.14. Provisions for public access to natural resources, as appropriate.

### E7.3. SPECIFIC CONTENTS OF AN ICRMP

An ICRMP shall include, as appropriate:

E7.3.1. A summary of known cultural resources information and a list and brief description of properties listed or eligible for listing in the National Register of Historic Places.

E7.3.2. Analysis of the sufficiency of the existing

information on cultural resources and associated contexts to meet compliance requirements.

E7.3.3. Information on areas that have not been inventoried and a plan for completion of the inventory.

E7.3.4. Identification and prioritization of actions required to implement goals and objectives of the plan.

E7.3.5. Identification of the type and location of actions that may affect cultural resources.

E7.3.6. Procedures to ensure that actions of the installation and its tenants are planned and carried out in ways that protect and enhance its cultural resources.

E7.3.7. Identification of unique cultural resource issues confronting the installation.

E7.3.8. Preservation and mitigation strategies for threatened cultural resources.

E7.3.9. Coordination processes between the installation, regulatory agencies and the public that help to ensure proper management of an installation's cultural resources.

E7.3.10. Provisions for permanent storage of historic property records, as required by reference (cc) and other recordkeeping requirements.

E7.3.11. Standard operating procedures for routine occurrences and where blanket statements can coordinate a process, such as inventories, repetitive maintenance and repair, unexpected discovery and reporting, and spill responses where cultural resources are involved and tailored for the particular conditions at the installation.

E7.3.12. Procedures for the documentation of historic properties that will be altered or destroyed as a result of DoD action or assistance, in accordance with 36 CFR 79 (reference (e)).

E7.3.13. Procedures for consultation with all interested groups and individuals that represent an interest in cultural resources.

E7.3.14. Procedures for unanticipated discovery of an historic property or other cultural resource.

E7.3.15. Procedures to ensure that all archeological collections are properly processed, maintained and preserved, in accordance with 32 CFR 22 (reference (w)).

E7.3.16. Provisions for sharing appropriate cultural resources information with Federal and State agencies, nongovernmental organizations, researchers, and the general public.



E7.3.17. Provisions for enforcement of cultural resource laws and regulations by professionally trained personnel.

E7.3.18. Provisions for public access to cultural resources, as appropriate.

E8. ENCLOSURE 8

## PRINCIPLES FOR CONSULTATIONS WITH NATIVE AMERICANS

### E8.1. GENERAL PRINCIPLES FOR NATIVE AMERICAN CONSULTATIONS

Native Americans often have strong religious and cultural ties to natural areas. Where applicable, DoD must consider these interests in land management decisionmaking through consultation to identify and protect Native American cultural resources. The Department of Defense shall carry out consultations with Native American tribal governments in a manner that respects the sovereign status of each such Federally-recognized tribe. The Department of Defense shall consult to the greatest extent practicable and to the extent permitted by law prior to taking actions that affect the protected interests of Federally-recognized tribal governments. Consultation shall be conducted with sensitivity to cultural values, socioeconomic factors, and the administrative structure of the native group.

### E8.2. GOALS OF CONSULTATION PRINCIPLES

The goals of those consultation principles are to do the following:

E8.2.1. Increase DoD awareness of the requirements of Native American cultures and religions, while increasing Native American awareness of DoD mission requirements.

E8.2.2. Increase Native American participation, as appropriate, in consultations on DoD actions and decisions that affect issues of significance to Native Americans.

E8.2.3. Educate DoD personnel about relevant policies and laws on Native Americans.

E8.2.4. Provide access by Native Americans to sacred and religious sites on DoD lands.

E8.2.5. Protect Native American cultural and historical resources on DoD lands or on non-DoD lands used by the Department of Defense.

### E8.3. CONSULTATION PRINCIPLES

E8.3.1. Respect the Sovereign Status of Each Native American Tribal Government. The Department of Defense

must work directly with Federally-recognized tribes on a government-to-government basis, recognizing the sovereignty of each tribe. First contact should be made with the tribal leadership under the Presidential Memorandum (reference (y)).

E8.3.2. Recognize the Importance and Variety of Traditional Native American Culture and Authorities. Native Americans have many different cultures, not just one. Consultations may differ from tribe to tribe.

E8.3.3. Recognize Native Americans Have a Strong Connection to Traditional Tribal Lands and Their Resources.

Historically, Native Americans have practiced religious ceremonies on lands owned by the Department of Defense or adjacent to lands owned by the Department of Defense.

Fishing, hunting, and gathering activities are a pivotal part of the traditional culture of Indian tribes.

The Department of Defense shall provide access to sacred sites for Native Americans who wish to perform religious or traditional ceremonies; collect botanical, animal, mineral, or other cultural resources; or to exercise their right to receive repatriated ancestral remains and artifacts when possible. Except where required by competent authority, the Department of Defense shall limit access to those sites when necessary for the military mission, for reasons of safety or security, to ensure compliance with applicable laws and regulations, or to prevent serious negative environmental consequences.

Although the Department of Defense is not responsible for protecting natural and cultural resources near DoD lands, the Department of Defense is responsible for considering whether projects on military lands do not create an adverse effect on natural and cultural resources on property adjacent to DoD lands.

E8.3.4. Improve Communications and Coordination Between the Department of Defense and Native Americans. The Department of Defense shall identify institutional, political, economic, social, and other barriers to full communications and coordination, and work towards eliminating them. The Department of Defense shall take a proactive approach to involving tribal governments in the decisionmaking process at the earliest date possible and continue those consultations until completion of the project or action.

There is no simple and universally correct way to coordinate or consult with Native American groups.

Appropriate approaches vary from tribe to tribe and situation to situation. Oral communications will often be the preferred means of communications. Planning shall be undertaken with an effort to minimize any negative effects on Native Americans or their lands or cultural resources. The Department of Defense shall also comply with all notification and consultation requirements contained in the National Environmental Policy Act (NEPA) (reference (k)) and Section 4341 of 42 U.S.C. (reference (d)) and other appropriate statutes.

E8.3.5. Comply with All Applicable Executive Orders and Federal, State, and Local Statutory and Regulatory Requirements on Native American Issues. The Department of Defense shall work with Native Americans to ensure the requirements of all appropriate laws and guidelines are met.

E8.3.6. Maintain the Secrecy of Native American Religious and Ceremonial Practices on DoD Lands. Many traditional religious and cultural practices require privacy and cannot be performed in the presence of nonparticipants.

The Department of Defense shall work with tribal governments to protect the privacy of those practices. Archeological sites, traditional cultural properties, and sacred sites shall be protected from illegal entry or disturbance in accordance with DoD Directive 4165.61 and 36 CFR 79 (references (x) and (e)).

E8.3.7. Assign Specific Personnel at Each Installation to Work on Cultural Issues and Provide Necessary Training for All Appropriate DoD Personnel. At each DoD installation, the base commander shall choose a staff member to serve as a liaison between the Department of Defense and tribal governments, if present. This person should be trained to deal with Native American issues. Other appropriate DoD personnel shall participate in training courses and workshops to learn about local Indian tribes, including those who currently reside in the area of the installation, and those tribes who historically have lived in the area and may return during the year to participate in religious or ceremonial activities. Those courses should cover Native American traditional, religious, and cultural values and practices, and how best to communicate on an intercultural level keeping in mind that Native Americans often record their history orally.

E8.3.8. Prepare and Distribute Maps Showing Traditional and Contemporary Tribal Lands On and Adjacent to Military Installations. To ensure that tribes who have an interest in DoD lands for religious ceremonies or cultural practices are identified and contacted when proposed actions or projects come up, the Department of Defense shall develop maps identifying traditional and contemporary tribal lands in and around DoD installations.

E8.3.9. Support Cooperative Efforts That Encourage Tribal and Federal Partnerships in the Management of DoD Lands. The Department of Defense supports the use of agreements such as Memoranda of Agreement and Memoranda of Understanding between the Department of Defense and other Federal Agencies, State governments, nonprofit organizations, or tribes, when possible.

The primary goal of formalized agreements with tribal governments is better management of DoD lands in such a manner as to minimize adverse impacts to Native Americans.

Cooperative efforts are an important part of an ongoing

process to open up communications between DoD personnel and tribes to work together on the shared goal of protection of cultural resources and traditional Native American practices.